UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TONY DEWAYNE BEARD, JR.,
a legally incapacitated individual,
by and through **JOHNETTE FORD,**
his guardian,

Plaintiffs,

v.

KATIE SCHNEIDER, ERIC JACHYM,
TIMOTHY GOUGEON, MATTHEW TAYLOR,
RYAN LOSH, and **KORY KARPINSKY,**

Defendants.

Honorable Nancy G. Edmunds
Magistrate Elizabeth A. Stafford

Case No. 14-13465

JURY INSTRUCTIONS

Faithful Performance of Duties; Jury to Follow Instructions

Members of the jury, the evidence in this case has been completed and I will now instruct you as to the law.

Faithful performance by you of your duties is vital to the administration of justice.

The law you are to apply in this case is contained in these instructions, and it is your duty to follow them. You must consider them as a whole and not pick out one or some instructions and disregard others.

Following my instructions you will hear the closing arguments of counsel, and then retire to the jury room to deliberate and decide on your verdict.

M Civ JI 3.01

Facts To Be Determined From Evidence

It is your duty to determine the facts from evidence received in open court. You are to apply the law to the facts and in this way decide the case. Sympathy or prejudice must not influence your decision. Nor should your decision be influenced by prejudice regarding race, sex, religion, national origin, age, handicap, or any other factor irrelevant to the rights of the parties.

M Civ JI 3.02

Admission of Evidence

The evidence you are to consider consists of testimony of witnesses and exhibits offered and received. The admission of evidence in court is governed by rules of law. From time to time it has been my duty as judge to rule on the admissibility of evidence. You must not concern yourselves with the reasons for these rulings, and you must not consider any exhibit to which an objection was sustained or any testimony which was ordered stricken.

M Civ JI 3.03

Attorneys' Statements Not Evidence; Admission by Attorney

Arguments, statements and remarks of attorneys are not evidence, and you should disregard anything said by an attorney which is not supported by evidence or by your own general knowledge and experience. However, an admission of fact by an attorney is binding on his or her client.

M Civ JI 3.04

(Deleted by January 2014 amendments–because consolidated with M Civ JI 2.04.)

Admission of a Party

One type of evidence is known as an admission of a party. The admission may be a statement made in the pleading filed in the case, a statement on the record during testimony, or a statement in a written exhibit. Attorneys may also make an admission on behalf of their clients.

JI 3.01

Evidence Introduced for a Limited Purpose

Whenever evidence was received for a limited purpose or limited to [one party/certain parties], you must not consider it for any other purpose or as to any other [party/parties].

M Civ JI 3.07

Judge's Opinion as to Facts Is to Be Disregarded

I have not meant to indicate any opinion as to the facts by my rulings, conduct, or remarks, during the trial; but if you think I have, you should disregard it, because you are the sole judges of the facts.

M Civ JI 3.08

(Deleted by January 2014 amendments, consolidated with M Civ JI 2.04.)

Jury to Consider All the Evidence

In determining whether any fact has been proved, you shall consider all of the evidence bearing on that fact without regard to which party produced the evidence.

M Civ JI 3.09

Direct and Circumstantial Evidence

There are, generally speaking, two types of evidence from which a jury may properly find the truth as to the facts of a case. One is direct evidence -- such as the testimony of an eyewitness. The other is indirect or circumstantial evidence -- the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

Facts can be proved by direct evidence from a witness or an exhibit. Direct evidence is evidence about what we actually see or hear. For example, if you look outside and see rain falling, that is direct evidence that it is raining.

Facts can also be proved by indirect or circumstantial evidence. Circumstantial evidence is evidence that normally or reasonably leads to other facts. So, for example, if you see a person come in from outside wearing a raincoat covered with small drops of water, that would be circumstantial evidence that it is raining.

Circumstantial evidence by itself, or a combination of circumstantial evidence and direct evidence, can be used to prove or disprove a proposition. You must consider all the evidence, both direct and circumstantial.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that the jury find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

O'Malley 101.42
M Civ JI 3.10

Opinion Evidence -- Expert Witnesses

You have heard the testimony of Dr. Bradley Merker, Dr. Steven Buchman, and Dr. Darrell Ross, referred to as expert witnesses. The rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. An exception to this rule exists as to those whom we call "expert witnesses." Witnesses who, by education and experience, have become expert in some art, science, profession, or calling, may state an opinion as to relevant and material matters, in which they profess to be expert, and may also state their reasons for the opinion.

You should consider each expert opinion received in evidence in this case and give it such weight, if any, as you may think it deserves.

You should consider the testimony of expert witnesses just as you consider other evidence in this case. If you should decide that the opinion of an expert witness is not based upon sufficient education or experience, or if you should conclude that the reasons given in support of the opinion are not sound, or if you should conclude that the opinion is outweighed by other evidence (including that of other expert witnesses) you may disregard the opinion in part or in its entirety.

As I have told you several times, you–the jury–are the sole judges of the facts of this case.

Federal Jury Practice and Procedure § 14.01. Opinion Evidence–the expert witness

Jurors May Take Into Account Ordinary Experience and Observations

You have a right to consider all the evidence in the light of your own general knowledge and experience in the affairs of life, and to take into account whether any particular evidence seems reasonable and probable. However, if you have personal knowledge of any particular fact in this case, such knowledge may not be used as evidence.

M Civ JI 3.11

Order of Witnesses

As I previously instructed you, the parties have agreed to present their cases simultaneously. Normally, the plaintiff would present his case by presenting all of his witnesses and exhibits. Then the defendants would present their case by presenting all of their witnesses and exhibits. However, in the interests of saving time, the parties have agreed not to call witnesses twice and to accommodate the schedules of the witnesses. Therefore, the witnesses and exhibits were not presented in the normal fashion, but were instead a mix of both plaintiff's and defendants' witnesses. The order of the witnesses, questioning of the witnesses, and presentation of exhibits, should not influence your decision. Your decision should be based on the substance of the evidence.

Credibility of Witnesses

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You may be guided by the appearance and conduct of the witness, or by the manner in which the witness testified, or by the character of the testimony given, or by evidence to the contrary of the testimony given.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness's intelligence, motive, state of mind, demeanor, and manner while testifying. Consider each witness's ability to observe the facts as to which he has testified, and whether he impresses you as having an accurate recollection of these matters. Consider also any relation each witness may have with either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such weight, if any, as you determine it deserves.

You may, in short, accept or reject the testimony of any witness in whole or in part.

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying to the existence or non-existence of any fact. You may find that the testimony of a small number of witnesses as to any fact is more credible than the testimony of a large number of witnesses to the contrary.

Federal Jury Practice and Instructions § 105:01, Discrepancies in testimony

Witness Who Has Been Interviewed by an Attorney

It has been brought out that an attorney, or a representative of an attorney, has talked with a witness. There is nothing wrong with an attorney, or a representative of an attorney, talking with a witness for the purpose of learning what the witness knows about the case and what testimony the witness will give.

M Civ JI 4.06

Consideration of Deposition Evidence

During the trial, certain evidence was presented to you by the reading of depositions. A deposition is a recording of the sworn testimony of parties or witnesses taken before an authorized person. All parties and their attorneys had the right to be present and to examine and cross-examine the witnesses.

This evidence is entitled to the same consideration as you would give the same testimony had the witnesses testified in open court.

M Civ JI 4.11

Impeachment -- Inconsistent Statements or Conduct

A witness may be discredited or impeached by contradictory evidence; 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 any witness has been impeached and thus discredited, you may give the testimony of that witness such weight, if any, as you may think it deserves.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness's other testimony and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.

An act or omission is "knowingly" done, if voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

Federal Jury Practice and Instructions §105:04

See also M Civ JI 3.15 (not used here).

Impeachment by Proof of Conviction of Crime

In deciding whether you should believe a witness you may take into account the fact that he has been convicted of a crime and give that fact such weight as you believe it deserves under the circumstances.

M Civ JI 5.03

All Available Evidence Need Not Be Produced

The law does not require any party to call as witnesses all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters in issue at this trial. Nor does the law require any party to produce as exhibits all papers and things mentioned in the evidence in the case.

Federal Practice and Instructions § 105.11

Definitions Introduced

I shall now give you the definitions of some important legal terms. Please listen carefully to these definitions so that you will understand the terms when they are used later.

M Civ JI 10.01

Preponderance of the Evidence

The burden is on the plaintiff in a civil action, such as this, 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's claim by a preponderance of the evidence in the case, the jury should find for the defendant as to that claim.

To "establish by a preponderance of the evidence" means to prove that something is more likely so than not so. In other words, a preponderance of the evidence in the case means such evidence as, when considered and compared with that opposed to it, has more convincing force, and produces in your minds belief that what is sought to be proved is more likely true than not true. This rule does not, of course, require proof to an absolute certainty, since proof to an absolute certainty is seldom possible in any case.

In determining whether any fact in issue has been proved by a preponderance of the evidence in the case, the jury may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits in evidence, regardless of who may have produced them.

Federal Practice and Instructions § 104.01

Dismissed Parties

You may have heard evidence that other individuals at one time were a parties to this lawsuit, those individuals have been dismissed from the case. You are to consider only whether the plaintiff has proved his case against each individual defendant under these instructions.

Dismissed Claims

That concludes the part of my instructions explaining your duties, the general rules that apply in every civil case, and the rules that you must use in evaluating particular testimony and evidence. In a moment, I will explain the elements of the plaintiff's claims. But before I do that, I want to emphasize that although you may have heard certain evidence, some issues have already been resolved and you must accept them as true.

It has already been decided that the Southfield officers, including the Defendants, had the authority to initiate, pursue, and stop Plaintiff on the night in question. The officers that initiated the chase did so legally. You must accept this as true.

It has also already been decided that Defendant Katie Schneider did not use excessive force by stopping Plaintiff's vehicle using the Pursuit Intervention Technique (PIT) maneuver. You must accept this as true.

It has also already been decided that Defendants Timothy Gougeon, Eric Jachym, Kory Karpinsky, Ryan Losh, and Katie Schneider did not violate Plaintiff's equal protection rights by allegedly using racial slurs. The only defendant to whom this claim applies is Matthew Taylor. Dismissing this claim against the other defendants should not influence any of your decisions in any way.

You should not allow any suggestions to the contrary to impact your decision in this case.

Statement of the Claim

Plaintiff has brought two claims in this lawsuit. Plaintiff brings his first claim of excessive force against all six Defendants. Plaintiff brings his second claim of a violation of equal protection against Defendant Matthew Taylor only. I will now explain to you the elements of each claim.

Claim 1 – Excessive Force in Violation of the Fourth Amendment

In order to establish his first claim for excessive force in violation of the Fourth Amendment, the Plaintiff has the burden to prove by a preponderance of the evidence each of the following elements:

1) First, that each Defendant committed an intentional act that deprived Plaintiff of a right guaranteed by the United States Constitution, specifically the right to be free from the use of excessive force during an arrest;
2) Second, that each Defendant acted under color of state law. The parties have agreed that this element has been established.
3) Third, that each Defendant's acts were the proximate cause of the injuries claimed by Plaintiff.

If you find that Plaintiff has proved each of the elements that I have explained to you against each Defendant, and the Defendants have failed to prove that their actions were objectively reasonable in light of the facts and circumstances confronting them, your verdict will be for the Plaintiff.

If you find that the Plaintiff has failed to prove any one of the elements or if you find that the Defendants have proved the defense that their actions were objectively

reasonable in light of the facts and circumstances confronting them, your verdict will be for the defendant.

Claim 2 – Violation of Right to Equal Protection Guaranteed Under the Fourteenth Amendment

In order to establish his second claim for a violation of the right to equal protection guaranteed under the Fourteenth Amendment, the Plaintiff has the burden to prove by a preponderance of the evidence each of the following elements:

1) First, that Defendant Matthew Taylor violated Plaintiff's right to be free from excessive force under the Fourth Amendment;
2) Second, that while violating Plaintiff's right Defendant Matthew Taylor used racially discriminatory language.

If you find that Plaintiff has proved each of the elements that I have explained to you against Defendant Taylor, your verdict will be for the Plaintiff.

If you find that the Plaintiff has failed to prove any one of the elements, your verdict will be for the defendant.

See *Taylor v. City of Falmouth*, 187 F. App'x 596, 601 (6th Cir. 2006).

Fourth Amendment Claim – Intentional Act

In order to find a Defendant liable you must find that the Defendant committed an intentional act or failure to act. Each Defendant can only be found liable for their own individual acts or failure to act.

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. No defendant is to be prejudiced should you find against another. Unless otherwise stated, all instructions I give you govern the case as to each defendant.

Fourth Amendment – Standard of Review

In making a lawful stop or arrest, a law enforcement officer has the right to use such force as is reasonable under the circumstances. The stop and arrest here was lawful. Whether or not the force used was excessive is a question to be determined by you in light of all of the evidence received in the case.

There is no precise definition or formula available for determining whether force is unlawful in a particular case. In determining whether a defendant used unlawful or excessive force, you may consider:

(a) The extent of the injury suffered,

(b) The need for the application of force,

(c) The relationship between the need to use force and the amount of force used;

(d) The threat reasonably perceived by the responsible actors,

(e) Whether Plaintiff was actively resisting detention, and

(f) Any efforts made to temper the severity of a forceful response.

The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with hindsight. The nature of reasonableness must allow for the fact that police officers are often forced to make split-second judgments – under circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.

This reasonableness inquiry is an objective one. The question is whether the defendants' actions were objectively reasonable in light of the facts and circumstances confronting him or her, without regard to his or her underlying intent or motivation.

Thus, if, after considering the scope of discretion and responsibility generally given to police officers in the performance of their duties, and after considering all of the surrounding circumstances of the case as they would have reasonably appeared at the time of the detention, you find from a preponderance of the evidence that Plaintiff has proved that a defendant used greater force than was reasonably necessary, you must find that defendant is liable for a violation of Plaintiff's constitutional rights.

If plaintiff has failed to prove any one of these elements, your verdict must be for the defendants.

Therefore, in order to prove a violation under the Fourth Amendment in this case, the Plaintiff must prove the following element by a preponderance of the evidence:

(1) That Plaintiff was subjected to defendant's excessive force.

If the Plaintiff fails to prove this element, you must find for the defendants.

In order to award damages for violation of Plaintiff's Fourth Amendment rights in this case, the Plaintiff must prove the following element by a preponderance of the evidence:

(2) That he was injured and damaged as a result of the defendant's excessive use of force.

If the Plaintiff fails to prove this element, Plaintiff is awarded nominal damages of $1.00.

Plaintiff's Obligations

In deciding this matter, you must understand and accept that Plaintiff had certain obligations as well. Those obligations included the following:

(1) Plaintiff had a duty to refrain from resisting the defendants' detention or arrest.

(2) When a police officer gives a lawful order such as an order to stop, the person at whom the order is directed has a legal obligation comply.

(3) Defendants, as law enforcement officers, were permitted to use such force as was reasonably necessary to effect the lawful detention or arrest.

Proximate Cause

If you believe that Plaintiff's constitutional rights were violated, you must then consider whether the violations caused injury or damage to him. Plaintiff must show that every injury or item of damages was proximately caused by a defendant's unlawful actions. 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:

a) The unlawful act played a substantial part in bringing about or actually causing the injury or damage, and

b) The injury or damage was either a direct result or a reasonably probable consequence of the unlawful act.

There may be more than one cause of an injury or damage. Many factors or things, or the conduct of two or more persons, may operate at the same time, either independently or together, to cause injury or damage; and, in such a case, each may be a cause.

Measure of Damages

If you decide that the plaintiff is entitled to damages, it is your duty to determine the amount of money which reasonably, fairly and adequately compensates him for each of the elements of damage which you decide has resulted from the actions of a defendant, taking into account the nature and extent of the injury.

You should include each of the following elements of damage which you decide has been sustained by the plaintiff to the present time:

a. disability and disfigurement

b. physical pain and suffering

c. mental anguish

d. denial of social pleasure and enjoyments

e. embarrassment, humiliation or mortification

f. aggravation of a pre-existing ailment or condition

You should also include each of the following elements of damage which you decide plaintiff is reasonably certain to sustain in the future:

a. mental anguish

b. denial of social pleasure and enjoyments

c. embarrassment, humiliation or mortification

d. aggravation of pre-existing ailment or condition.

If any element of damage is of a continuing nature, you shall decide how long it may continue.

Which, if any, of these elements of damage has been proved is for you to decide based upon evidence and not upon speculation, guess or conjecture. The amount of

money to be awarded for certain of these elements of damage cannot be proved in a precise dollar amount. The law leaves such amount to your sound judgment. Your verdict must be solely to compensate plaintiff for her damages, and not to punish the defendant.

M Civ JI 50.01

Element of Damage—Aggravation of Preexisting Ailment or Condition

In deciding the elements of Plaintiff's damages, you must decide whether he suffered an aggravation of a preexisting ailment or condition. An aggravation is an increase in overall pain levels arising from aggravation to the pre-existing mental, emotional or psychological, and other medically documented cognitive deficits.

M Civ JI 50.04

Defendant Takes the Plaintiff As It Finds Him

You are instructed that the defendants takes the plaintiff as they find him. If you find that the plaintiff was unusually susceptible to injury, that fact will not relieve the defendant from liability for any and all damages resulting to plaintiff as a proximate result of the defendant(s)' actions.

M Civ JI 50.10

Inability to Determine Extent of Aggravation of Injuries

If an injury suffered by plaintiff is a combined product of both a preexisting injury and the effects of defendant(s) conduct, it is your duty to determine and award damages caused by defendant(s) conduct alone. You must separate the damages caused by defendant(s) conduct from the condition which was preexisting if it is possible to do so.

However, if after careful consideration, you are unable to separate the damages caused by defendant(s) conduct from those which were preexisting, then the entire amount of plaintiff's damages must be assessed against the defendants.

Reasonable Damages

Damages must be reasonable. If you should find that Plaintiff is entitled to a verdict, you may award Plaintiff only such damages as will reasonably compensate him for such injury and damage as you find that was sustained as a proximate result of Defendants' acts. Compensatory damages are not restricted to actual loss of injury—tangible and intangible. They are an attempt to restore Plaintiff, that is, to make him whole or as he was immediately prior to the injuries. Compensatory damages are not allowed as a punishment and cannot be imposed or increased to penalize defendants. You may award only such damages as you find by a preponderance of the evidence were caused by unconstitutionally excessive force as I have defined it.

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. If you should award damages, they will not be subject to federal or state income taxes, and you should therefore not consider such taxes in determining the amount of damages.

Duty to Mitigate Damages

Plaintiff has the duty to mitigate his damages—that is, to take reasonable steps that would reduce the damages. If he fails to do so, then he is not entitled to recover any damages that he could reasonably have avoided incurring. Defendants have the burden of proving by a preponderance of the evidence that plaintiff failed to take such reasonable steps.

Punitive Damages

In addition to compensatory damages, you may then also award punitive damages. Punitive damages can be awarded in order to punish the Defendants for some extraordinary misconduct, and to serve as an example or warning to others not to engage in such conduct. Punitive damages can be awarded if the Plaintiff has proved that a Defendant acted with malice or willfulness or with callous and reckless indifference to the safety or rights of others.

One acts willfully or with reckless indifference to the rights of others when he acts in disregard of a high and excessive degree of danger about which he knows or which would be apparent to a reasonable person in his condition. They are awarded to punish a defendant for outrageous conduct and to serve as an example or warning to others not to engage in similar conduct in the future.

If you determine by a preponderance of the evidence that a Defendant's conduct was so shocking and offensive as to justify an award of punitive damages, you may exercise your discretion to award those damages. In making any award of punitive damages, you should consider that the purpose of punitive damages is to punish a defendant for shocking conduct, and to deter the Defendant and others from engaging in similar conduct in the future. The law does not require you to award punitive damages, however, if you decide to award punitive damages, you must use sound reason in setting the amount of the damages. The amount of an award of punitive damages must not reflect bias, prejudice, or sympathy toward any party. It should be presumed a plaintiff has been made whole by compensatory damages, so punitive damages should be awarded only if a

Defendant's misconduct, after having paid compensatory damages, is so reprehensible as to warrant the imposition of further sanctions to achieve punishment or deterrence.

Fourteenth Amendment - Damages

In order to award damages for violation of Plaintiff's Fourteenth Amendment rights in this case, the Plaintiff must prove that he was injured and damaged as a result of the Defendant Taylor's use of a racial epithet while violating Plaintiff's Fourth Amendment rights.

If the Plaintiff fails to prove this element Plaintiff is awarded nominal damages of $1.00.

Effect of Instruction as to Damages

The fact 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 Plaintiff from a preponderance of the evidence in the case in accordance with the other instructions.

Whether Party Is Insured Is Irrelevant

Whether a party is insured has no bearing whatever on any issue that you must decide. Don't even discuss or speculate about insurance.

M Civ JI 3.06

Deliberations

(to be given after closing arguments)

The following instructions concern the manner of your deliberations.

Election of Foreperson

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

A verdict form has been prepared for your convenience.

[Read verdict form.]

You will take this form 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.

Federal Practice and Instruction §106.04

The Use of Electronic Technology to Conduct Research on or Communicate about a Case

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone, Blackberry or computer; the internet, any internet service, or any text or instant messaging service; or any internet chat room, blog, or website such as Facebook, My Space, LinkedIn, YouTube or Twitter, to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict.

Verdict - Unanimous - Duty to Deliberate

When you go to the jury room, the foreperson should see to it that your discussions are carried on in a businesslike way and that everyone has a fair chance to be heard.

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.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without disregard for individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning 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 this case.

Federal Jury Practice and Instructions §106.01

Communications Between Court and Jury During Jury's Deliberations

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

From the oath about to be taken by my court staff you will note 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 to me—how the jury stands, numerically or otherwise, on the questions before you, until after you have reached a unanimous verdict.

When you reach an agreement as to the verdict, you should send a note to the staff, signed by the foreperson, on which you shall state only that a verdict has been reached.

Federal Practice and Instructions §106.08
JI 60.01

Viewing Videos During Deliberations

If, at anytime during your deliberations, you wish to view the video evidence, you may send a note requesting to do so to me through my court staff. You will be permitted to view the video evidence in the courtroom. Only myself, my staff, and the video technician, will be present in the courtroom while you view the videos. You will not be permitted to speak to each other while the videos are played. You may watch the videos as many times as you need.

Verdict Forms -- Jury's Responsibility

It is proper to add the caution that nothing said in these instructions and nothing in any form of verdict prepared for your convenience is meant to suggest or convey in any way or manner any suggestion or hint as to what verdict I think you should find. What the verdict shall be is the sole and exclusive duty and responsibility of the jury.

Federal Practice and Instructions § 106.07

Juror Notes

If you elected to take notes during the trial, your notes should be used only as memory aids. You should not give your notes greater weight than your independent recollection of the evidence.

You should rely upon your own independent recollection of the evidence or lack of evidence and you should not be unduly influenced by the notes of other jurors. Notes are not entitled to any more weight than the memory or impression of each juror.

Whether you took notes or not, each of you must form your own opinion as to the facts of the case.

Jury Instructions

You each have your copy of these instructions for your use while deliberating. If you have questions about the law or your duties as jurors, you should consult the copy of the instructions as given to you.

I am also sending in all of the exhibits with you for your use while deliberating.

JI 60.02

Verdict

When you have reached agreement as to the answers in the verdict form, in accordance with these instructions, have your foreperson fill in the date and sign the form. Then notify the Court's staff that you have reached a verdict, and bring the verdict form with you upon your return to the Court.