UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARK ANTHONY REED-BEY,
#151290

Plaintiff,

v.

GEORGE PRAMSTALLER, ET AL.,

Defendants.
_____/

Case No. 06-10934

Honorable Victoria A. Roberts

Magistrate Judge R. Steven Whalen

JURY INSTRUCTIONS

TABLE OF CONTENTS

1. § 101.01 Opening Instructions

We are about to begin the trial of the case you heard about during jury selection. Before the trial begins, I am going to give you instructions that will help you to understand what will be presented to you and how you should conduct yourself during the trial.

During the trial you will hear me use a few terms that you may not have heard before. Let me briefly explain some of the most common to you. The party who sues is called the plaintiff. In this action, the plaintiff is Mark Reed-Bey. The party being sued is called the defendant. In this action, the defendant is Seetha Vadlamudi.

You will sometimes hear me refer to "counsel." "Counsel" is another way of saying "lawyer" or "attorney." I will sometimes refer to myself as the "Court."

When I "sustain" an objection, I am excluding that evidence from this trial for a good reason. When you hear that I have "overruled" an objection, I am permitting that evidence to be admitted.

When I say "admitted into evidence" or "received into evidence," I mean that this particular statement or the particular exhibit may be considered by you in making the decisions you must make at the end of the case.

By your verdict you will decide disputed issues of fact. I will decide all questions of law that arise during the trial. Before you begin your deliberation at

the close of the case, I will instruct you in more detail on the law that you must follow and apply.

Because you will be asked to decide upon the facts of this case, you should give careful attention to the testimony and evidence presented. Keep in mind that I will instruct you at the end of the trial about determining the credibility or "believability" of the witnesses. During the trial, you should keep an open mind and should not form or express any opinion about the case until you have heard all of the testimony and evidence, the lawyers' closing arguments, and my instructions to you on the law.

While the trial is in progress, you must not discuss the case in any manner among yourselves or with anyone else. In addition, you should not permit anyone to discuss the case in your presence.

From time-to-time during the trial, I may make rulings on objections or motions made by the lawyers. It is a lawyer's duty to object when the other side offers testimony or other evidence that the lawyer believes is not admissible. You should not be unfair or partial against a lawyer or the lawyer's client because the lawyer has made objections. If I sustain or uphold an objection to a question that goes unanswered by the witness, you should not draw any inferences or conclusions from the question. You should not infer or conclude from any ruling

or other comment I may make that I have any opinions on the merits of the case favoring one side or the other. I do not favor one side or the other.

The trial lawyers are not allowed to speak with you during the case. When you see them at a recess or pass them in the halls and they do not speak to you, they are not being rude or unfriendly; they are simply following the law.

During the trial, it may be necessary for me to talk with the lawyers out of your hearing about questions of law or procedure. Sometimes, you may be excused from the courtroom during these discussions. I will try to limit these interruptions as much as possible, but you should remember the importance of the matter you are here to determine and should be patient even though the case may seem to go slowly.

2. § 101.02 Order of Trial

The case will proceed as follows:

First, the lawyers for each side will make opening statements. What is said in the opening statements is not evidence, but is simply an outline or summary to help you understand what each party expects the evidence to show. A party is not required to make an opening statement.

After the opening statements, the plaintiff, Mr. Reed-Bey, will present evidence in support of his claims and the defendant's lawyer may cross-examine the witnesses. At the conclusion of his case, Dr. Vadlamudi may introduce evidence and Mr. Reed Bey's lawyer may cross-examine the witnesses. Dr. Vadlamudi is not required to introduce any evidence or to call any witnesses to oppose Mr. Reed-Bey's case. If Dr. Vadlamudi introduces evidence, Mr. Reed-Bey may then present rebuttal evidence.

After the evidence is presented, the parties' lawyers make closing arguments explaining what they believe the evidence has shown. What is said in the closing arguments is not evidence.

Finally, I will instruct you on the law that you are to apply in reaching your verdict. You will then decide the case.

3. § 101.30 Judge's Questions to Witnesses

During the trial I may sometimes ask a witness questions. Please do not assume that I have any opinion about the subject matter of the question.

4. § 101.31 Bench Conferences

From time to time it may be 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. The lawyers and I will do what we can to limit the number and length of these conferences.

5. § 104.40 Evidence in the Case

The evidence of the case will consist of the following:

1. The sworn testimony of the witnesses, no matter who called a witness.
2. All exhibits received into evidence, regardless of who may have produced the exhibits.
3. All facts that may have been judicially noticed and that you must take as true for purposes of this case.

Depositions may also be received in evidence. Depositions contain sworn testimony, with lawyers for each party being entitled to ask questions. In some case, a deposition may be played for you on videotape. Deposition testimony may be accepted by you, subject to the same instructions that apply to witnesses testifying in open court.

Statements and arguments of the lawyers are not evidence in the case, unless made an admission or stipulation of fact. A "stipulation" is an agreement between both sides that certain facts are true. When the lawyers on both sides stipulate or agree to the existence of a fact, you must, unless otherwise instructed, accept the stipulation as evidence, and regard that fact as proved.

I may take judicial notice of certain facts or events. When I declare that I will take judicial notice of some fact or event, you must accept that fact as true.

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

Some evidence is admitted for a limited purpose only. When I instruct you that an item of evidence has been admitted for a limited purpose, you must consider it only for that limited purpose and for no other purpose.

You are to consider only the evidence in the case. But in your consideration of the evidence you are not limited to the statements of the witness. In other words, you are not limited solely to what you see and hear as the witnesses testified. You may draw from the facts that you find have been proved, such reasonable inferences or conclusions as you feel are justified in light of your experience.

As the end of trial you will have to make your decision based on what you recall of the evidence. You will not have a written transcript to consult, and it is difficult and time consuming for the reporter to read back lengthy testimony. I urge you to pay close attention to the testimony as it is given.

6. § 101.42 Direct and Circumstantial Evidence

"Direct evidence" is direct proof of a fact, such as testimony by a witness about what the witness said or heard or did. "Circumstantial evidence" is proof of one or more facts from which you could find another fact. You should consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You are to decide how much weight to give any evidence.

7. § 101.43 Credibility of Witnesses

In deciding the facts, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, part of it, or none of it. In considering the testimony of any witness, you may take into account many factors, including the witness' opportunity and ability to see or hear or know the things the witness testified about; the quality of the witness' memory; the witness' appearance and manner while testifying; the witness' interest in the outcome of the case; any bias or prejudice the witness may have; other evidence that may have contradicted the witness' testimony; and the reasonableness of the witness' testimony in light of all the evidence. The weight of the evidence does not necessarily depend upon the number of witnesses who testified.

8. § 101.47 Stipulations at Pretrial Conference

Before the trial of this case, the court held a conference with the lawyers for all the parties. At this conference, the parties entered into certain stipulations or agreements in which they agreed that facts could be taken as true without further proof.

The stipulated facts are as follows:

A. The Plaintiff was an inmate at the Mound Road Correctional Facility (NRF) from April 6, 2005 to April 27, 2007.

B. The Defendant worked as a physician at NRF during all times relevant to this lawsuit.

C. Plaintiff injured his shoulder during a sporting event at the Mound Correctional Facility in Detroit on September 12, 2005.

D. Plaintiff was taken to Detroit Receiving Hospital later in the evening of September 12, 2005 for emergency treatment.

E. At Detroit Receiving Hospital, Plaintiff was diagnosed with a Grade III acromioclavicular (AC) separation of his right shoulder.

F. Plaintiff was discharged from the hospital on the evening of September 12, and returned to the prison early in the morning of September 13, 2005.

G. Plaintiff's injury constitutes a serious medical need.

H. In his October 12, 2005 visit to prison medical staff, Plaintiff was seen by a nurse.

I. X-rays were taken of Plaintiff's shoulder on October 25, 2005.

J. The x-rays taken on October 25, 2005 revealed a Grade IV AC separation of his right shoulder.

K. Surgery was performed to repair Plaintiff's shoulder on April 12, 2006.

Since the parties have stipulated to these facts and do not dispute them, you are to take these facts as true for purposes of this case.

9. § 103.01 General Introduction

Now that you have heard the evidence 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 of 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 law 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.

10. § 103.10 Instructions to Apply to Each Party

Unless I state otherwise, you should consider each instruction given to apply separately and individually to each plaintiff and to each defendant in the case.

11. § 103.11 All Persons Equal Before the Law—Individuals

This case should be considered and decided by you as a dispute between persons of equal standing in the community, of equal worth, and holding the same or similar situations in life. All persons stand equal before the law and are to be treated as equals.

12. § 103.30 Evidence in the Case

Unless you are otherwise instructed, the evidence in the case consists of the sworn testimony of the witnesses regardless of who called the witness, all exhibits received in evidence regardless of who may have produced them, and all facts and events that may have been admitted or stipulated to.

Statements and arguments by the lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statement, closing arguments, and at other times is intended to help you understand the evidence, but it is not evidence. However, when the lawyers on both sides stipulate or agree on the existence of a fact, unless otherwise instructed, you must accept the stipulation and regard that fact as proved.

Any evidence to which I have sustained an objection and evidence that I have ordered stricken must be entirely disregarded.

13. § 103.33 Court's Comments Not Evidence

The law permits me to comment to you on the evidence in the case. These comments are only an expression of my opinion as to the facts. You may disregard my comments entirely, since you, as jurors are the sole judges of the facts and are not bound by my comments or opinions.

14. § 103.34 Questions Not Evidence

If a lawyer asks a witness a question containing an assertion of fact, you may not consider the assertion as evidence of that fact. The lawyer's questions and statements are not evidence.

15. § 104.01 Preponderance of the Evidence

Mr. Reed-Bey has the burden in a civil action, such as this, to prove every element of his claim by a preponderance of the evidence. If Mr. Reed-Bey should fail to establish any essential element of his claim by a preponderance of the evidence, you should find for Dr. Vadlamudi as to that claim.

"Establish by a preponderance of the evidence" means evidence which as a whole, shows that the fact sought to be proved is more probable than not. In other words a preponderance of the evidence means such evidence as, when considered and compared with the evidence 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 standard does not 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, unless otherwise instructed you may consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them.

16. § 104.04 “If You Find” or “If You Decide”

When I instruct you that a party has the burden of proof on any proposition, or use the expression “if you find,” or “if you decide,” it means that you must be persuaded, considering all the evidence in the case that the proposition is more probably true than not.

17. § 104.05 “Direct” and “Circumstantial” Evidence—Defined

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.

18. § 104.20 “Inferences” Defined

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 of the case.

19. § 104.24 Notice or Knowledge—Duty of Inquiry

If it appears from the evidence in the case a person had information that would lead a reasonably prudent person to make inquiry through which that person would surely learn the facts, then this person may be found to have had actual knowledge of those facts, the same as if the person had made such inquiry and had actually learned such facts. The law charges a person with notice and knowledge of whatever that person would have learned, on making such inquiry as it would have been reasonable to expect the person to make under the circumstances.

Knowledge or notice may also be established by circumstantial evidence. If it appears that a certain condition has existed for a substantial period of time, and that the person had regular opportunities to observe the condition, then you may draw the inference that the person had knowledge of the condition.

20. § 104.54 Number of Witnesses

The weight of the evidence is not necessarily determined by the number of witnesses testifying to the existence or nonexistence of any fact. You may find the testimony of a small number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

You are not bound to decide any issue of fact in accordance with the testimony of any number of witnesses that does not produce in your minds the belief in the likelihood of truth, as against the testimony of a lesser number of witnesses or other evidence producing such belief in your minds.

The test is not which side brings the greater number of witnesses or takes the most time to present its evidence, but which witnesses and which evidence appeal to your minds as being most accurate and otherwise trustworthy.

21. § 105.01 Discrepancies in Testimony

You 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 witnesses, or by the manner in which the witness testifies, or by the character of testimony given, or by evidence contrary to the testimony.

You should carefully examine all the testimony given, the circumstances under which each witness has testified, and every matter in evidence tending to show whether a witness is worthy of belief. Consider each witness' intelligence, motive and state of mind, and demeanor or manner while testifying. Consider the witness' ability to observe the matters as to which the witness has testified, and whether the witness impresses upon you as having an accurate recollection of these matters. Also, consider any relation each witness may have with either side of the case, and the extent to which the testimony of 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 to discredit such testimony. Two or more persons seeing an event may see or hear it differently.

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, that you may think it deserves. In short, you may accept or reject the testimony of any witness, in whole or in part.

In addition, the weight of the evidence is not necessarily determined by the number of witnesses testifying to the existence or nonexistence 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 larger number of witnesses to the contrary.

22. **§ 105.04 Impeachment—Inconsistent Statement 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 that 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 credibility, if any, you think it deserves.

If a witness is shown knowingly to have testified falsely about any material matter, you have a right to distrust such witness' 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 the act is done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

PAGE LEFT BLANK

24. § 105.11 All Available Witnesses or 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.

25. § 106.01 Duty to Deliberate

The verdict must represent the considered judgment of each of you. 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 of 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 facts. Your sole interest is to seek the truth from the evidence in the case.

26. § 106.02 Effect of Instruction as to Damages

The fact I will instruct 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. Instructions as to the measure of damages are given for your guidance only in the event should find in favor of Mr. Reed-Bey from a preponderance of the evidence in accordance with the other instructions.

27. § 106.04 Election of Foreperson—General Verdict

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

Verdict forms have been prepared for your convenience.

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 that sets forth the verdict upon which you unanimously agree. You will then return with your verdict to the courtroom.

28. § 106.07 Verdict Forms—Jury's Responsibility

Nothing said in these instructions and nothing in any verdict from 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 your sole and exclusive duty and responsibility.

29. § 106.08 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 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 the jury officer 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.

30. § 166.10 Generally

Under the Eight Amendment to the U.S. Constitution, every person convicted of a crime or a criminal offense has the right not to be subjected to cruel and unusual punishments.

Section 1983, the federal civil rights statute under which Mr. Reed-Bey sues, provides that a person may seek relief in this court by way of damages against any person or persons who, under the color of any state law or custom, subjects such person to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.

31. § 166.21 Denial of Medical Care

Inmates are protected from cruel and unusual punishment under the Eight Amendment of the U.S. Constitution. Mr. Reed-Bey claims that Dr. Vadlamudi demonstrated deliberate indifference to his serious medical needs in violation of his Eighth Amendment constitutional rights.

To show that Mr. Reed-Bey's Eighth Amendment rights were violated because he received inadequate medical care, Mr. Reed-Bey must prove by a preponderance of the evidence that Dr. Vadlamudi exhibited deliberate indifference to his serious medical needs. Accordingly, Mr. Reed-Bey must prove all of the following elements by a preponderance of the evidence:

First: That Mr. Reed-Bey had a serious illness or injury. This is not an issue in this case. The parties have agreed that Mr. Reed-Bey had a serious injury.

Second: That Dr. Vadlamudi was aware of Mr. Reed-Bey's serious need for medical care;

Third: That Dr. Vadlamudi, with deliberate indifference to the illness or injury of Mr. Reed-Bey, failed to provide medical care as needed;

Fourth: That Mr. Reed-Bey was injured as a result of Dr. Vadlamudi's deliberate indifference to Mr. Reed-Bey's serious medical needs; and

Fifth: That Dr. Vadlamudi was acting under color of state law. This is not an issue in this case. The parties agree that Dr. Vadlamudi was acting under the color of state law as a prison official employed by the State of Michigan.

If Mr. Reed-Bey fails to prove any of these elements, you must find for Dr. Vadlamudi.

The second element is to be evaluated by a subjective analysis of Dr. Vadlamudi and her state of mind.

32. § 166.30 Deliberate Indifference

Deliberate indifference is established only if there is actual knowledge of a substantial risk that Mr. Reed-Bey suffered pain and complications due to a shoulder injury and if Dr. Vadlamudi disregarded that risk by intentionally refusing or failing to take reasonable measures to deal with the problem. Mere negligence or inadvertence does not constitute deliberate indifference.

33. § 166.60 Actual Damages

If you find in favor of Mr. Reed-Bey, 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 you find that he sustained as a result of his shoulder separation. You should consider the following elements of damages:

1. The physical pain and mental and emotional suffering Mr. Reed-Bey has experienced; the nature and extent of the injury, whether the injury is temporary or permanent;
2. The reasonable value of medical care and supplies reasonably needed by and actually provided to Mr. Reed-Bey;
3. The wages, salary, profits, reasonable value of the working time Mr. Reed-Bey has lost because of his diminished ability to work.

34. § 166.61 Nominal Damages

If you find in favor of Mr. Reed-Bey under Instruction Number 31, but you find that his damages have no monetary value, then you must return a verdict for Mr. Reed-Bey in the nominal amount of one dollar.

35. § 166.62 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 Mr. Reed-Bey and against Dr. Vadlamudi and if you find the conduct of Dr. Vadlamudi as submitted in Instruction Number 31 was recklessly and callously indifferent to Mr. Reed-Bey's medical needs then, in addition to any other damages to which you find Mr. Reed-Bey is entitled, you may, but are not required to, award Mr. Reed-Bey an additional amount as punitive damages if you find it is appropriate to punish Dr. Vadlamudi or to deter Dr. Vadlamudi and others from like conduct in the future. Whether to award Mr. Reed-Bey punitive damages and the amount of those damages are within your sound discretion.

36. 8.02 Experiments, Research, and Investigation

(1) Remember that you must make your decision based only on the evidence that you saw and heard here in court. Do not try to gather any information about the case on your own while you are deliberating.

(2) For example, do not conduct any experiments inside or outside the jury room; do not bring any books, like a dictionary, or anything else like any electronic device with you to help you with your deliberations; do not conduct any independent research, reading, or investigation about the case including through the internet; and do not visit any of the places that were mentioned during the trial.

(3) Make your decision based only on the evidence that you saw and heard here in court.

37. 8.09 Juror Notes

(1) Remember that 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.

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

38. 8.10 Court Has No Opinion

Let me finish up by repeating something that I said to you earlier. Nothing that I have said or done during this trial was meant to influence your decision in any way. You decide for yourselves if Mr. Reed-Bey has proved the elements of his claim by a preponderance of the evidence.