Jury Instruction No. 1

ORIGINAL

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1. Plaintiff has the burden of proving her claim by a preponderance of the evidence.

2. Defendants have the burden of proving their affirmative defense by a preponderance of the evidence.

3. To prove something by a "preponderance of the evidence" means to prove that it is more probably true than not.

4. "Burden of proof" means the obligation a party has to prove their claim or defense by a preponderance of the evidence. The party with the burden of proof can use evidence produced by any party to persuade you.

5. If a party fails to meet their burden of proof as to any claim or defense or if the evidence weighs so evenly that you are unable to say that there is a preponderance on either side, you must reject that claim or defense.

Jury Instruction No. 2

Any finding of fact you make must be based on probabilities, not possibilities. You should not guess or speculate about a fact.

Jury Instruction No. 3

The evidence in the case consists of the sworn testimony of all the witnesses, all exhibits which have been received in evidence, and all facts which have been admitted or agreed to.

In deciding the facts, you must consider only the evidence received at trial. Evidence offered at the trial and rejected or stricken by the Court must not be considered by you. Statements, remarks, arguments, and objections by counsel and remarks of the Court not directed to you are not evidence.

You are to consider only the evidence in the case and the reasonable inferences from that evidence. An inference is a conclusion that follows, as a matter of reason and common sense, from the evidence.

The weight of evidence is not necessarily determined by the number of witnesses testifying to a particular fact.

Jury Instruction No. 4

The parties stipulate or agree to the existence of certain facts. This agreement makes the presentation of any evidence to prove these facts unnecessary. The agreement means that you must accept these facts as true.

The parties have agreed that the following facts are true:

1. Plaintiff Johnson is a 78-year-old retired United States Postal Service worker who at all relevant times resided in Denver's Montbello neighborhood at 5380 Worchester Street Denver, Colorado.

2. Defendant Staab was at all relevant times a Detective with the Denver Police Department.

3. Defendant Buschy was at all relevant times a Sergeant with the Denver Police Department and Defendant Staab's superior.

4. On January 3, 2022, a white truck, Texas license plate LW0548 was stolen from the Hyatt Regency in downtown Denver.

5. Hotel personnel contacted the truck's owner, Jeremy McDaniel, who was a guest at the hotel on January 3, 2022 and Mr. McDaniel confirmed his truck had been stolen.

6. On the morning of January 4, 2022, the theft of McDaniel's truck was assigned to Defendant Staab for investigation.

7. Defendant Staab drafted and submitted an affidavit in support of search warrant for Ms. Johnson's home at 5380 N. Worchester Street Denver, Colorado.

8. After Defendant Staab completed his affidavit for the search warrant of Plaintiff Johnson's home, Defendant Buschy reviewed, approved, and signed it.

9. Plaintiff Johnson was never a suspect in the theft of McDaniel's truck.

10. The search of Plaintiff Johnson's home turned up nothing that was sought in the search warrant.

Jury Instruction No. 5

Evidence may be either direct or circumstantial. Circumstantial evidence is the proof of facts or circumstances from which the existence or nonexistence of other facts may reasonably be inferred. All other evidence is direct evidence. The law makes no distinction between the effect of direct evidence and circumstantial evidence.

Jury Instruction No. 6

Certain testimony has been video recorded and introduced into evidence from a deposition. A deposition is testimony taken under oath before the trial. You are to consider that testimony as if it had been given by the witness from the witness stand.

Jury Instruction No. 7

Certain witnesses testified remotely via videoconference. You are to consider that testimony as if it had been given by the witness from the witness stand and you may not draw any adverse inferences from the fact that the witness did not appear in person.

Jury Instruction No. 8

You must not be influenced by sympathy, bias, or prejudice for or against any party in this case.

Jury Instruction No. 9

A witness qualified as an expert by education, training, or experience may state opinions. You should judge expert testimony just as you would judge any other testimony. You may accept it or reject it, in whole or in part. You should give the testimony the importance you think it deserves, considering the witness's qualifications, the reasons for the opinions, and all of the other evidence in the case.

Jury Instruction No. 10

You are the sole judges of the credibility of the witnesses and the weight to be given their testimony. You should take into consideration their means of knowledge, strength of memory and opportunities for observation; the reasonableness or unreasonableness of their testimony; the consistency or lack of consistency in their testimony; their motives; whether their testimony has been contradicted or supported by other evidence; their bias, prejudice or interest, if any; their manner or demeanor upon the witness stand; and all other facts and circumstances shown by the evidence which affect the credibility of the witnesses.

Based on these considerations, you may believe all, part, or none of the testimony of a witness.

Jury Instruction No. 11

The lawyers have highlighted certain parts of some exhibits. However, it is for you to determine the significance of the highlighted parts.

Jury Instruction No. 12

Plaintiff brings her claim under a Colorado statute, C.R.S. § 13-21-131, which provides that a peace officer who, under color of law, subjects or causes to be subjected any other person to the deprivation of any individual rights that create binding obligations on government actors secured by the bill of rights, article II of the state constitution, is liable to the injured party for legal or equitable relief or any other appropriate relief.

Jury Instruction No. 13

In order to prevail on her C.R.S. § 13-21-131 claim, Plaintiff must prove each of the following elements by a preponderance of the evidence as to each Defendant:

1. Defendant acted under color of law;

2. The act(s) of Defendant deprived Plaintiff of her particular rights under the bill of rights as explained in later instructions; and

3. Defendant's acts were the cause of damages sustained by Plaintiff.

The parties have stipulated that Defendants acted under color of law.

If you find that Plaintiff has failed to prove any one or more of these elements, your verdict must be for that Defendant.

However, if you find that Plaintiff has proved each of these elements, then your verdict must be for Plaintiff as to that Defendant.

Jury Instruction No. 14

Article II, section 7 of the Colorado Constitution provides that people shall be secure in their persons, papers, homes and effects, from unreasonable searches and seizures, and prohibits the issuance of a search warrant except upon probable cause supported by oath or affirmation reduced to writing particularly describing the place to be searched and objects to be seized.

Jury Instruction No. 15

A search warrant is a written order signed by a judge that permits a law enforcement officer to search a particular location and seize specific items. To obtain a search warrant, a law enforcement officer must show probable cause. In deciding whether to issue a search warrant, a judge generally relies on the facts stated in an affidavit signed by a law enforcement officer.

Probable cause must be established within the four corners of the warrant or its supporting affidavit. An affidavit submitted in support of a search warrant must set forth particular facts and circumstances underlying the existence of probable cause, so as to allow the magistrate to make an independent evaluation.

An affidavit need not describe all steps taken, information obtained, and statements made during an investigation, but must contain any material adverse facts.

Jury Instruction No. 16

To show that Plaintiff was deprived of her article II, section 7 rights, Plaintiff must prove each of the following two things by a preponderance of the evidence:

1. In the warrant affidavit, Defendant made false statements, or omissions that created a falsehood; and

2. Those false statements or omissions were material, or necessary, to the finding of probable cause for the arrest warrant.

To determine whether any misstatements or omissions were material, you must subtract the misstatements from the warrant affidavit, and add the facts that were omitted, and then determine whether the warrant affidavit, with these corrections, would establish probable cause.

You may consider information outside the affidavit to determine whether it contained material misrepresentations or material omissions.

Jury Instruction No. 17

Probable cause exists when the facts and circumstances are sufficient for an officer of ordinary prudence and caution to reasonably believe that contraband or other evidence of criminal activity is located at the place to be searched.

Whether probable cause has been established involves a practical, commonsense evaluation of the totality of the circumstances. Probable cause requires more than just a suspicion, but it is not measured by a 'more likely true than false' level of certitude. In determining whether probable cause existed, you should consider what Defendants knew, the reasonably trustworthy information Defendants received, and reasonable inferences that may flow from the information in the affidavit.

Jury Instruction No. 18

The word "cause" as used in these instructions means an act or failure to act which in natural and probable sequence produced the claimed injury. It is a cause without which the claimed injury would not have happened.

Jury Instruction No. 19

More than one person may be responsible for causing injuries. If you find that one of Defendants caused injuries to Plaintiff, it is not a defense that some third person might also have been a cause of the injuries.

Jury Instruction No. 20

Plaintiff has the burden of proving, by a preponderance of the evidence, the nature and extent of her damages. If you find in favor of Plaintiff, you must determine the total dollar amount of Plaintiff's damages, if any, that were caused by the violations of her constitutional rights by Defendants.

In determining such damages, you shall consider the following:

1. Any noneconomic losses or injuries which Plaintiff has had to the present time or probably will have in the future, including: physical and mental pain and suffering, inconvenience, emotional stress, impairment of the quality of life, and reputational damage.

2. Any economic losses or injuries which Plaintiff has had to the present time or probably will have in the future, including any damage to Plaintiff's home or other property.

Jury Instruction No. 21

You have heard testimony offered by Plaintiff and Gwendolyn Johnson that Plaintiff suffered from ulcers. The Court strikes that testimony. You are not to consider for any purpose any offer of evidence that is rejected or stricken. Such testimony is to be treated as if you had never heard it.

Jury Instruction No. 22

The fact that an instruction on measure of damages has been given to you does not mean that the Court is instructing the jury to award or not to award damages. The question of whether or not damages are to be awarded is a question for the jury's consideration.

Jury Instruction No. 23

Difficulty or uncertainty in determining the precise amount of any damages does not prevent you from deciding an amount. You should use your best judgment based on the evidence.

Jury Instruction No. 24

If you find that Plaintiff has had actual damages, then you must consider whether Defendants have proved the affirmative defense of Plaintiff's failure to mitigate or minimize damages. Plaintiff has the duty to take reasonable steps under the circumstances to mitigate or minimize her damages. Damages, if any, caused by Plaintiff's failure to take such reasonable steps cannot be awarded to Plaintiff.

This affirmative defense is proved if you find both of the following have been proven by a preponderance of the evidence:

1. Plaintiff failed to seek treatment for her claimed injuries as a reasonable person would have sought under the same or similar circumstances;

2. Plaintiff had increased damages because she did not seek such treatment.

If you find that any one or more of these propositions has not been proved by a preponderance of the evidence, then you shall make no deduction from Plaintiff's damages. On the other hand, if you find that both of these propositions have been proved by a preponderance of the evidence, then you must determine the amount of damages caused by Plaintiff's failure to take such reasonable steps. This amount must not be included in your award of damages.

Jury Instruction No. 25

If you find in favor of Plaintiff on her claim against a Defendant, then you shall consider whether she should recover punitive damages against that Defendant. If you find beyond a reasonable doubt that the Defendant acted in a willful and wanton manner in causing Plaintiff's injuries or damages, you shall determine the amount of punitive damages, if any, that Plaintiff should recover from that Defendant.

Punitive damages, if awarded, are to punish the Defendant and serve as an example to others.

Jury Instruction No. 26

Reasonable doubt means a doubt based upon reason and common sense which arises from a fair and rational consideration of all of the evidence, or the lack of evidence, in the case. It is a doubt which is not a vague, speculative, or imaginary doubt, but such a doubt as would cause reasonable people to hesitate to act in matters of importance to themselves.

Jury Instruction No. 27

Willful and wanton conduct means an act or omission purposefully committed by a person who must have realized that the conduct was dangerous, and which conduct was done heedlessly and recklessly, either without regard to the consequences, or without regard to the rights and safety of others, particularly the plaintiff.

Jury Instruction No. 28

These instructions contain the law that you must use in deciding this case. No single instruction states all the applicable law. All the instructions must be read and considered together.

You must not be concerned with the wisdom of any rule of law. Regardless of any opinion you may have as to what the law should be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the Court.

I do not, by these instructions, express any opinions as to what has or has not been proved in the case, or to what are or are not the facts of the case.

Jury Instruction No. 29

In your deliberations, your duty is to apply my instructions of law to the evidence that you have seen and heard in the courtroom. You are not allowed to look at, read, consult, or use any material of any kind, including any newspapers, magazines, television and radio broadcasts, dictionaries, medical, scientific, technical, religious, or law books or materials, or the Internet in connection with your jury service. I want to emphasize that you must not seek or receive any information about this case from the Internet, which includes all social networking, Google, Wikipedia, blogs, and any other website. You are not allowed to do any research of any kind about this case.

Do not use any information from any other source concerning the facts or the law applicable to this case other than the evidence presented and the instructions that I give you. Do not do your own investigation about this case.

Jury Instruction No. 30

The original forms of the written instructions and the exhibits are a part of the court record. Do not place any marks or notes on them. The instructions labeled "copy" may be marked or used in any way you see fit.

The Bailiff will now escort you to the jury room. After you get to the jury room you shall select one of your members to be the foreperson of the jury. That person will be in charge of your discussions. You must all agree on your verdict, and you must sign the original form of whatever verdict you reach.

Please notify the Bailiff when you have reached a verdict, but do not tell the Bailiff what your verdict is. You shall keep the verdict forms, these instructions, and the exhibits until I give you further instructions.

Jury Instruction No. 31

Once you begin your deliberations, if you have a question about the evidence in this case or about the instructions or verdict forms that you have been given, your foreperson should write the question on a piece of paper, sign it, and give it to the Bailiff who will bring it to me.

I will then confer with the attorneys as to the appropriate way to answer your question. However, there may be some questions that, under the law, I am not permitted to answer. If it is improper for me to answer the question, I will tell you that. Please do not speculate about what the answer to your question might be or why I am not able to answer a particular question.