

JURY INSTRUCTIONS

UJI 1.00 RESPECTIVE DUTIES OF JUDGE AND JURY

Ladies and Gentlemen of the Jury:

It is now my duty to instruct you on the law that applies to this case. It is your duty to follow the law.

As jurors, it is your duty to determine the effect and value of the evidence and to decide all questions of fact.

You must not be influenced by sympathy, prejudice, or passion.

UJI 1.05 IDENTIFICATION OF PARTIES AND CLAIMS

In this trial, the plaintiff is Christopher Smith, and the defendants are Daniel Silva, a police officer employed by the City of Fieldcrest Police Department, and the City of Fieldcrest.

Plaintiff is seeking to recover economic and noneconomic damages against defendants based upon the violation of his Fourth Amendment rights pursuant to the federal civil rights law, 42 USC § 1983.

UJI 2.00 DIRECT AND CIRCUMSTANTIAL EVIDENCE - INFERENCES

Evidence means testimony, writings, material objects, or other things presented to the senses and offered to prove the existence or non-existence of a fact.

Evidence is either direct or circumstantial. Direct evidence proves a fact without an inference and, if true, conclusively establishes that fact. Circumstantial evidence proves a fact from which an inference of the existence of another fact may be drawn.

An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts established by the evidence.

The law makes no distinction between direct and circumstantial evidence as to the degree of proof required; each is a reasonable method of proof, and each is respected for such convincing force as it may carry.

UJI 2.01 WEIGHING CONFLICTING TESTIMONY

You are not required to decide any issue according to the testimony of a number of witnesses, which does not convince you, as against the testimony of a smaller number of witnesses or other evidence, which is more convincing to you. The testimony of one witness worthy of belief is sufficient to prove any fact. This does not mean that you are free to disregard the testimony of any witness merely from caprice or prejudice, or from desire to favor either side. It does mean that you

must not decide anything by simply counting the number of witnesses who have testified on the opposing sides. The test is not the number of witnesses, but the convincing force of the evidence.

UJI 2.04 FAILURE TO DENY OR EXPLAIN ADVERSE EVIDENCE

In determining what inferences to draw from the evidence, you may consider, among other things, a party's failure to explain or deny such evidence.

UJI 2.20 BELIEVABILITY OF WITNESS

You are the sole and exclusive judges of the believability of the witnesses and the weight to be given to the testimony of each witness.

In determining the believability of a witness, you may consider any matter that has a tendency in reason to prove or disprove the truthfulness of the testimony of the witness, including, but not limited to, the following:

The demeanor and manner of the witness while testifying;

The character and quality of that testimony;

The extent of the capacity of the witness to perceive, recollect, or communicate any matter about which the witness testified;

The opportunity of the witness to perceive any matter about which the witness has testified;

Evidence concerning the bias, motives, or interest of the witness;

Any statement previously made by the witness that is consistent or inconsistent with the testimony of the witness;

The existence or nonexistence of any fact testified to by the witness; and

The attitude of the witness toward this action or toward the giving of testimony.

UJI 2.21 DISCREPANCIES IN TESTIMONY

Discrepancies in a witness's testimony, or between one witness's testimony and that of another witness, do not necessarily mean that a witness should be discredited. Failure of recollection is common. Innocent misrecollection is not uncommon. Two persons witnessing an incident or a transaction will often see or hear it differently. Whether a discrepancy pertains to an important matter or only to something trivial should be considered by you.

UJI 2.5 EXPERT TESTIMONY

You have heard witnesses give opinions about matters requiring special knowledge or skill. You

should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness's qualifications, and all of the other evidence in the case.

UJI 2.60 BURDEN OF PROOF AND PREPONDERANCE OF EVIDENCE

Plaintiff is seeking damages based upon the claim of destruction of two companion dogs.

Plaintiff has the burden of proving by a preponderance of the evidence all of the facts necessary to establish these claims.

Preponderance of the evidence means evidence that has more convincing force than that opposed to it. If the evidence is so evenly balanced that you are unable to say that the evidence on either side of an issue preponderates, your finding on that issue must be against the party who had the burden of proving it.

You should consider all of the evidence bearing upon every issue regardless of who produced it.

UJI 2.7 CAUSE

Questions Numbers 1-2 of the verdict asks whether each defendant's actions caused damage or injury to the plaintiff. These questions do not ask about "*the* cause" but rather "*a* cause" because an injury may have more than one cause.

You must decide whether each defendant's actions caused the injury. A defendant's actions caused the injury if the actions were a substantial factor in producing the injury.

UJI 79 § 1983 – ACTING UNDER COLOR OF LAW

Question No. 6 of the verdict asks whether defendant Silva acted "under color of law" during the incident in which plaintiff's dogs were shot and killed.

The federal law, Section 1983, provides that "every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws" of the United States "shall be liable to the party injured."

Officer Silva is a police officer employed by the City of Fieldcrest. When a person acts "under color of law," it means that the person uses or misuses authority that he has because of his official position.

UJI 83 FOURTH AMENDMENT SEIZURE

Question No. 8 of the verdict asks whether the seizure of plaintiff's dogs was unreasonable and in violation of the Fourth Amendment.

The Fourth Amendment forbids the destruction of a person's property when that destruction is unnecessary – that is, when less intrusive, or less destructive, alternatives exist. The destruction of a person's property may include the killing of a person's dog.

Police are required to know that they must create a plan to enter the perimeter of a person's property when they know or learn of the presence of a dog on that property. Police must consider a method for subduing the dog besides killing.

Police are required to know that killing a person's dog without taking the proper precautions would violate the Fourth Amendment.

When police know or learn a dog is on property to be searched, police may not simply go onto the property without considering and creating a tactical plan, and may not simply wait to encounter and then kill a dog.

UJI 85 DEFENDANT SILVA'S QUALIFIED IMMUNITY

If you find that the plaintiff has proven his claim, you must then consider defendant Silva's defense that his conduct was objectively reasonable in the light of the legal rules clearly established at the time of the incident in issue and that defendant Silva is therefore not liable.

If, after considering the scope of discretion and responsibility generally given to police officers in the performance of their duties, you find from a preponderance of the evidence that the plaintiff has proved either that the defendant (1) was plainly incompetent, or (2) knowingly violated the law regarding the plaintiff's constitutional rights, you must find for the plaintiff. If, however, you find that the defendant had a reasonable belief that his actions did not violate the constitutional rights of the plaintiff, then you cannot find him liable even if the plaintiff's rights were in fact violated as a result of the defendant's objectively reasonable action.