

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

ERNEST SIMURO, and ERNEST SIMURO	:	
On behalf of K.S., a minor,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Case No. 2:13-cv-00030
	:	
LINDA SHEDD,	:	
	:	
Defendant.	:	

JURY CHARGE

Members of the Jury:

Now that you have heard the evidence and the arguments, it is my duty to instruct you on the law. It is your duty to accept these instructions of law and apply them to the facts as you determine them.

The Plaintiffs in this case are Ernest Simuro and Ernest Simuro on behalf of his grandson, K.S. The Defendant is Linda Shedd. Mr. Simuro alleges that Defendant Shedd's actions violated his rights under the United States Constitution to be free from unreasonable seizure and malicious prosecution and to be, remain and associate with his family. He also claims that these acts constituted civil wrongs under Vermont law. K.S. claims that Defendant Shedd's actions deprived K.S. of his right to be free from unreasonable seizure by causing him to be

removed from the care and custody of Ernest Simuro. Defendant denies these claims.

ROLE OF THE COURT AND THE JURY

You have listened carefully to the testimony presented to you. Now you must pass upon and decide the factual issues of this case. You are the sole and exclusive judges of the facts. You pass upon the weight of the evidence, you determine the credibility of the witnesses, you resolve such conflicts as there may be in the evidence, and you draw such inferences as may be warranted by the facts as you find them.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole. You are not to be concerned with the wisdom of any rule of law stated by the court. Regardless of any opinion you may have as to what the law may be or ought to be, it would be a violation of your sworn duty as judges of the facts to base a verdict upon anything but the evidence in the case.

Nothing I say in court or in these instructions is to be taken as an indication that I have any opinion about the facts of the case. It is not my function to determine the facts. That is your function.

You are to discharge your duty as jurors in an attitude of complete fairness and impartiality. You should appraise the

evidence deliberately and without the slightest trace of sympathy, bias, or prejudice for or against any party.

EVIDENCE

You have seen and heard the evidence produced in this trial, and it is the sole province of the jury to determine the facts of this case. The evidence consists of the sworn testimony of the witnesses, any exhibits admitted into evidence, and all the facts admitted or stipulated. I would now like to call to your attention to certain guidelines by which you are to evaluate the evidence.

There are two types of evidence which you may properly use in reaching your verdict. One type of evidence is direct evidence. Direct evidence is when a witness testifies about something she or he knows by virtue of their own senses -- something she or he has seen, felt, touched, or heard. Direct evidence may also be in the form of an exhibit where the fact to be proved is the exhibit's existence or condition.

Circumstantial evidence is evidence which tends to prove a disputed fact by proof of other facts. You infer, on the basis of reason, experience and common sense, from one established fact the existence or non-existence of some other fact. Circumstantial evidence is of no less value than direct evidence. It is a general rule that the law makes no distinction between direct evidence and circumstantial evidence,

but requires that your verdict must be based on all the evidence presented.

CREDIBILITY OF WITNESSES

You as jurors are the sole judges of the credibility of the witnesses and the weight of their testimony. You do not have to accept all the evidence presented in this case as true or accurate. Instead, it is your job to determine the credibility or believability of each witness. You do not have to give the same weight to the testimony of each witness since you may accept or reject the testimony of any witness in whole or in part.

The weight of the evidence is not determined by the number of witnesses testifying. You may find the testimony of a small number of witnesses or a single witness about a fact more credible than the different testimony of a larger number of witnesses. 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 may well hear or see things differently, or may have different points of view regarding various occurrences. It is for you to weigh the effect of any discrepancies in testimony, considering whether they pertain to matters of importance or to unimportant details, and whether a discrepancy results from innocent error or intentional falsehood. You should attempt to

resolve inconsistencies if you can, but you also are free to believe or disbelieve any part of the testimony of any witness as you see fit.

EXPERT WITNESSES

You have heard the testimony of expert witnesses in this case. An expert is allowed to express his or her opinion on those matters about which he or she has special knowledge and training. Expert testimony is presented to you on the theory that someone who is experienced in a field can assist you in understanding the evidence or in reaching an independent decision on the facts.

In weighing an expert's testimony, you may consider his or her qualifications, opinions, and reasons for testifying, as well as all of the other considerations that apply when you are deciding whether to believe a witness's testimony. You may give the expert's testimony whatever weight, if any, you find it deserves in light of all the evidence in this case. You should consider the soundness of his or her opinion, reasons for the opinion, and the expert's motive, if any, for testifying. You should not, however, accept the expert's testimony merely because he or she is an expert. Nor should you substitute it for your own reason, judgment, and common sense. The determination of the facts in this case, as I have said, rests solely with you.

LAW ENFORCEMENT WITNESSES

You have heard the testimony of law enforcement officials in this case. The fact that a witness may be employed by the federal, state, or local government as a law enforcement official does not mean that his or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of an ordinary witness. It is your decision, after reviewing all the evidence, whether to accept the testimony of law enforcement officials, and to give to that testimony whatever weight, if any, you find it deserves.

TESTIMONY AND ARGUMENTS EXCLUDED

I caution you that you should entirely disregard any testimony that has been excluded or stricken from the record. Likewise, the arguments of the attorneys and the questions asked by the attorneys are not evidence in the case. The evidence that you will consider in reaching your verdict consists only of the sworn testimony of witnesses, the stipulations made by the parties, and all exhibits admitted into evidence. When the attorneys for Plaintiffs and Defendant stipulate or agree as to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

Anything you have seen or heard outside the courtroom is not evidence, and must be entirely disregarded. You are to consider only the evidence in the case. But in your

consideration of the evidence, you are not limited merely to the statements of the witnesses. In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw, from facts which you find have been proved, such reasonable inferences as you feel are justified in light of your experiences.

BURDEN OF PROOF AND PREPONDERANCE OF THE EVIDENCE

Because this is a civil case, Plaintiffs have the burden of proving every element of their claim "by a preponderance of the evidence." To prove something by a preponderance of the evidence means to prove that something is more likely true than not true. A preponderance of the evidence means the greater weight, or logic, or persuasive force of the evidence. It does not mean the greater number of witnesses or documents. It is a matter of quality, not quantity.

In determining whether any fact in issue has been proved by a preponderance of the evidence, you may consider the testimony of all the witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have produced them. If, after considering all of the evidence, you conclude that Plaintiffs have failed to establish any essential element of their claims by a preponderance of the evidence, you should find for Defendant. If after such consideration you find the evidence of both parties to be in

balance or equally probable, then Plaintiffs have failed to sustain their burden and you must find for Defendant. If you find that Plaintiffs have established all essential elements of their claims by a preponderance of the evidence, you should find for Plaintiffs.

JUDICIAL NOTICE

The Court has decided to accept as proven the following facts:

1. A violation of 13 V.S.A. §3252(d) (which prohibits a person from engaging in a sexual act with a child under the age of 18 who is entrusted to that person's care or who is that person's child, grandchild, or ward) is punishable by imprisonment for a minimum of three years and up to a maximum of life in prison, plus a fine of up to \$25,000;
 2. A violation of 13 V.S.A. §2602(a)(1) (which prohibits a person from willfully and lewdly committing any lewd or lascivious act upon or with the body, or any part or member thereof, of a child under the age of 16 years, with the intent of arousing, appealing to, or gratifying the lust, passions or sexual desires of such person or of such child) is punishable by imprisonment for not less than two years and not more than 15 years, plus a fine of up to \$5,000;
- and

3. A person convicted of violating either 13 V.S.A. §3252(d) or 13 V.S.A. §2602(a)(1) is required to register as a sex offender to be listed on the Registry of Sex Offenders maintained in Vermont and all other states where the convicted person may relocate. A person who is convicted of violating 13 V.S.A. §3252(d) is required to register as a sex offender each year for life.

You must accept these facts as true.

TRANSCRIPT OF RECORDING

You were provided with a transcript of video recordings received in evidence during the trial as a guide to help you listen to the recording. The transcripts were provided as aid or guide to assist you, the jury, in listening to the recordings; however, the transcripts themselves are not evidence. The recordings are evidence, and, as such, you must rely on your own interpretation of what you heard on the recordings. If you think you heard something different than what was represented on the transcript, then what you heard on the recording must control.

PLAINTIFFS' LEGAL CLAIMS

Plaintiff Ernest Simuro brings three claims under the United States Constitution and three claims under Vermont law. Plaintiff K.S. brings a single constitutional claim. You are to consider the claims of each Plaintiff separately. I will now

instruct you on the elements of each of the Plaintiffs' legal claims.

Counts I and VII: False arrest

Plaintiff Ernest Simuro claims that Defendant Shedd violated his constitutional rights by arresting him without probable cause. In addition, Plaintiff Simuro brings a claim under Vermont law for the tort of false arrest for the same actions. A tort is simply a civil wrong. I will now instruct you on the elements of each of these claims:

Under federal law, the elements of the Plaintiff's false arrest claim are:

1. Defendant Shedd acted under color of state law
2. Defendant Shedd intentionally seized Plaintiff Ernest Simuro
3. Plaintiff Ernest Simuro was conscious of the seizure
4. Plaintiff Ernest Simuro did not consent to the seizure
5. The seizure was not otherwise privileged; and
6. Defendant Shedd's acts were the actual and proximate cause of injuries suffered by Plaintiff Ernest Simuro.

I will elaborate on each of these elements.

1. Action under color of state law

The first element of the Plaintiff's claim is that the conduct complained of was committed by the Defendant acting under color of state law. Action "under color of state law" means that the

Defendant claims to be acting pursuant to authority given him by the state, even if he is misusing that authority. Whether the Defendant committed the acts alleged by the Plaintiff is a question of fact for you, the jury to decide. Assuming that the Defendant did commit those acts, I instruct you that, since the Defendant purported to be taking those acts in her capacity as a police officer employed by the Town of Windsor in the State of Vermont at the time of the acts in question, she was acting under color of state law.

2. Intent to seize Plaintiff Ernest Simuro

I instruct you that Defendant Shedd intentionally seized Mr. Simuro as a matter of law by telling Mr. Simuro that he was under arrest and shackling him to a wall.

3. Plaintiff was conscious of the seizure

The third element requires you to determine that Plaintiff Ernest Simuro was aware that he was seized.

4. Consent to the seizure

The fourth element requires you to determine that Mr. Simuro did not freely and voluntarily agree to be seized.

5. Was the seizure privileged?

A seizure is privileged if it is supported by probable cause at the time. Probable cause is established when the arresting officer has knowledge or reasonably trustworthy information that would lead a person of reasonable caution to believe that a

criminal offense has been committed by the person to be arrested. The existence of probable cause depends upon the reasonable conclusion to be drawn from the facts known to the arresting officer at the time of the arrest.

You may find that Defendant Shedd had probable cause if she had knowledge or reasonably trustworthy information that would lead a person of reasonable caution to believe that Mr. Simuro had committed a criminal offense. I will briefly describe the offenses that he was charged with.

First, the crime of "lewd and lascivious conduct" prohibits anyone from willfully and lewdly committing a lewd and lascivious act with a child under the age of 16 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of such person or such child. Whether an act is lewd depends on the nature and quality of the contact, judged by community standards of morality and decency in light of all the surrounding circumstances, accompanied by the specific lewd intent on the part of the perpetrator.

Second, the crime of sexual assault of a minor prohibits sexual acts between an adult and a minor under the age of 18 who is entrusted to the actor's care by authority of law or is the actor's child, grandchild, foster child, adopted child, or stepchild. Sexual acts include contact between the penis and the anus, the mouth and the penis, or any intrusion, however slight,

by any part of a person's body or any object into the genital or anal opening of another.

There are two legal doctrines related to probable cause which make the Plaintiffs' task of establishing liability more difficult.

a. Presumptive probable cause

The finding of probable cause by a criminal court creates a presumption that the police affidavit upon which its finding is based established probable cause. However, that presumption may be rebutted by evidence that the probable cause finding was procured by fraud, perjury, the suppression of evidence or other police conduct undertaken in bad faith. If the presumption is overcome because the affidavit was procured by such an irregularity, you must go back to the initial question of whether the officer had probable cause to arrest at the time based on the totality of the circumstances. You may consider whether, given the evidence available to the officer at the time, an accurate affidavit would have indicated that she had probable cause to arrest the Plaintiff.

b. Arguable probable cause

A police officer is entitled to a form of protection called "qualified immunity" in carrying out her duties. Under this doctrine, a police officer may be shielded from liability if she had "arguable probable cause" to conduct an arrest. This means

that she is not liable for the arrest if either (a) it was objectively reasonable for the officer to believe that probable cause existed; or (b) officers of reasonable competence could disagree on whether the probable cause test was met. If you find that arguable probable cause existed, you need not find that probable cause actually existed in this case.

6. Was Defendant Shedd's conduct an actual and proximate cause of injuries suffered by Plaintiff?

In order to hold the Defendant responsible for paying damages to the Plaintiff, you must establish that the Defendant's acts were the actual and proximate cause of the injury suffered by the Plaintiff. An act is the actual, or "but for", cause of injuries if the harm would not have occurred but for the Defendant's conduct, such that the Defendant's acts were a necessary condition for the occurrence of the Plaintiff's harm. An act is a proximate cause of an injury if it was a substantial factor in bringing about that injury, and if the injury was a reasonably foreseeable consequence of the Defendant's acts.

The elements for false arrest that the Plaintiff must prove under Vermont law are the same as those under federal law.

Counts I and VIII: Malicious prosecution

Plaintiff Ernest Simuro also claims that Defendant Shedd violated his rights under the Fourth Amendment of the United States Constitution by causing a malicious prosecution.

As with his claim for false arrest, the Plaintiff must demonstrate that the Defendant acted under color of state law. I have already instructed you that Defendant Shedd did so in this case, and that instruction holds for the claims of malicious prosecution as well as the claims of false arrest. Similarly, the Plaintiff must again prove that the Defendant's acts were the actual and proximate cause of the injuries suffered by Plaintiff Ernest Simuro as a result of the proceeding in question. The Court's instruction regarding actual and proximate cause offered in relation to false arrest also applies to the Plaintiff's malicious prosecution claims.

In addition, the Plaintiff must prove that:

1. Defendant Shedd initiated or caused the initiation of a criminal prosecution of Plaintiff Ernest Simuro
 - a. Without probable cause; and
 - b. With a malicious intent
2. And that the prosecution was eventually terminated in Plaintiff's favor, in a manner indicating that the Plaintiff was not guilty of the charge.

I will elaborate on these elements.

1. Initiating or causing the initiation of the criminal prosecution:

Since criminal charges are typically filed by prosecutors, there is a presumption that a prosecutor exercises independent

judgment in initiating a criminal prosecution. If the prosecutor in fact exercised independent judgment, then Defendant Shedd did not cause the initiation of the criminal prosecution. A police officer who does no more than disclose to a prosecutor all material information within his knowledge is not deemed to be the initiator of the proceeding. However, if the police officer either (1) created false information and forwarded it to prosecutors or (2) withheld relevant and material information from the prosecutors, then the presumption of the prosecutor's independent judgment is overcome.

2. Probable cause

As noted above, the Plaintiff must show that the Defendant caused the initiation of the criminal prosecution without probable cause. The same concept of probable cause applicable to the Plaintiff's false arrest claim also applies here. However, probable cause to prosecute and probable cause to arrest are distinguishable in that the determination as to each is made in different moments, and may be based on a different set of facts if made at a later point in time.

3. Malice

The Plaintiff must show that Defendant Shedd acted with malice, which is defined as some improper or wrongful motive. You may infer malice from a showing that the Defendant acted with a reckless disregard for the truth.

4. Favorable termination

The Plaintiff must show that the criminal case against him terminated in such a way as to indicate that he was innocent of wrongdoing. You should consider the circumstances under which the proceedings ended in deciding whether their termination indicated that Mr. Simuro was innocent.

The elements for malicious prosecution that you must establish under Vermont law are the same as those required to make out the parallel federal claim.

**Count III: Deprivation of Ernest Simuro's right to be and remain
with family**

Plaintiff Ernest Simuro alleges that Defendant Shedd violated his constitutional rights by unreasonably interfering with his care, custody and parenting of K.S. To succeed on this claim, the Plaintiff must prove the following:

1. Ernest Simuro had a constitutionally protected interest in the care, control and custody of K.S.
2. Defendant Shedd interfered with Ernest Simuro's interest in the care, control and custody of K.S.
3. Defendant Shedd's interference with Ernest Simuro's interest was so egregious and so outrageous that it may fairly be said to shock the contemporary conscience.
4. Defendant Shedd's conduct was the actual and proximate cause of Plaintiff Ernest Simuro's injuries.

I will elaborate on these elements.

1. Ernest Simuro's interest in the care, control and custody of K.S.

Legal guardians have a constitutionally protected interest in the care, control and custody of their children. Therefore, if you find that Ernest Simuro was K.S.' legal guardian at the time of Defendant Shedd's acts, you should find that he had such an interest.

2. Shedd's interference with Ernest Simuro's interest

A guardian's interest is counterbalanced by the compelling governmental interest in the protection of minor children, particularly in circumstances where the protection is considered necessary as against the guardians themselves. Therefore, a guardian's substantive constitutional rights are not infringed if a state official, in effecting a removal of a child from the parent's home, has a reasonable basis for thinking that a child is abused or neglected.

In addition, in order to find that Shedd interfered with Ernest Simuro's interest, you must find that Shedd's actions were the actual and proximate cause of the separation which eroded Ernest's protected interest. In other words, you must find that but-for Ms. Shedd's actions, Ernest Simuro would not have lost care, control and custody of K.S. Brief separations

are not considered severe enough to infringe upon the parent or guardian's constitutional interest.

3. Egregious and outrageous conduct

You may draw upon your own life experiences and those of your fellow jurors to assess whether the Defendant's acts were so egregious and so outrageous that it may fairly be said to shock the contemporary conscience.

4. Actual and proximate cause

You should refer to my prior instruction on actual and proximate cause.

Count V: K.S.'s claim of unreasonable seizure

K.S. makes a single claim -that Defendant Shedd violated his constitutional rights by causing him to be removed from Ernest Simuro's custody and instead placed into the custody of the Department of Children and Families without probable cause. The Plaintiff must show that:

1. Defendant Shedd acted under color of state law
2. Defendant Shedd caused the seizure of K.S.
3. The seizure was unreasonable.
4. Shedd's actions were the actual and proximate cause of K.S.'s injuries

You should refer to my prior instruction to find that Shedd acted under color of state law in this case and to determine

whether Shedd should be held responsible for causing K.S.'s injuries. I will elaborate on the remaining two elements.

2. Whether Defendant Shedd caused the seizure of K.S.

The removal of a child from the custody of his guardian is a seizure under the Fourth Amendment. You should refer to the instructions above to determine whether Shedd caused this removal of K.S. from the custody of his guardian.

3. Whether the seizure was unreasonable

In the context of seizures of children by child protective services agencies, the removal of a child from his parents' or guardians' custody is generally considered to be reasonable when it is executed pursuant to a court order. However, when state law does not authorize the removal of a child, the seizure is unreasonable for constitutional purposes even if executed pursuant to a court order. If a family court's decision is based upon a petition for removal which includes intentionally or recklessly false statements, the removal of the child may not be authorized by state law, and may therefore be unreasonable.

When the seizure is not executed pursuant to a court order, it must be based on probable cause. If the information possessed by the officer causing the seizure would have warranted a person of reasonable caution in the belief that the child was subject to the danger of abuse if he were not seized before court

authorization could reasonably have been obtained, his removal should be considered reasonable.

Count XIII: Intentional infliction of emotional distress

Plaintiff Ernest Simuro brings a claim under Vermont common law for intentional infliction of emotional distress. In order to prevail, the Plaintiff must show that:

1. Shedd engaged in extreme and outrageous conduct;
2. Done either intentionally or with reckless disregard of the probability of causing emotional distress; and
3. Which resulted in the suffering of extreme emotional distress proximately caused by the outrageous conduct.

Conduct is extreme and outrageous where it is so outrageous in character and extreme in degree as to go beyond the bounds of decency; it is conduct that is regarded as atrocious and intolerable in a civilized community.

A Defendant intentionally causes emotional distress where the Defendant desires to inflict severe emotional distress; or where the Defendant knows that emotional distress is certain, or substantially certain, to result from her conduct. A Defendant recklessly causes emotional distress when she acts with a deliberate disregard or a conscious indifference of the probability that emotional distress will result from the conduct in question.

Extreme emotional distress is distress so severe that, in a civilized community, no reasonable person should be expected to endure it.

You should refer to my instructions above for the definition of proximate cause.

DAMAGES

I will now instruct you on damages. The fact that I am instructing you on how to award damages does not mean that I have any opinion on whether or not Plaintiffs should prevail on the merits of any of their claims. In the event that you do not conclude Plaintiffs' rights were violated, you need not reach the question of damages. If you do find for the Plaintiffs on any or all of their claims, you must determine damages.

Plaintiff has the burden of proving damages by a preponderance of the evidence.

Compensatory damages

"Compensatory damages" is a legal term referring to the amount of monetary payment to which the Plaintiffs are entitled to compensate them for their losses, if any, which resulted from Defendant Shedd's acts. These are called "compensatory damages." Compensatory damages seek to make the Plaintiffs whole--that is, to compensate them for any harm that they may have suffered.

For each item of loss or harm that the Plaintiffs claim, they have the burden of proving by a preponderance of the evidence that (1) they have or will have such a loss or harm, and (2) the loss or harm was caused by the legal fault of the Defendant. If you decide that the Plaintiffs have proven these two matters to be more probable than not, you must then decide how much money will fully, fairly, and adequately compensate them for each of those items of loss or harm.

In determining the amount of damages to allow the Plaintiffs, you may draw such inferences as are justified by your common experiences and observations of humankind, from the evidence of the nature of the injuries and the results thereof. You may also consider whether it is more probable than not that their damages will continue into the future as a direct, natural and probable consequence of the Defendant's legal fault and, if so, award them full, fair and adequate compensation for those future damages.

If you find that a Plaintiff had a pre-existing condition which made him more subject to injury than a person in normal health, nevertheless the Defendant is legally responsible for all injuries suffered by the Plaintiff as a proximate result of the Defendant's wrongdoing, if any, even though those injuries, due to mentioned condition, may have been greater than those

which would have been suffered by a normal person under the same circumstances.

The damages you award must be fair and reasonable, neither inadequate nor excessive. You should not award damages for speculative injuries, but only for those injuries that the Plaintiffs have actually suffered or which they are reasonably likely to suffer in the future.

I remind you that you may award compensatory damages only for injuries that a Plaintiff proves were proximately caused by the Defendant's allegedly wrongful conduct. A basic principle of compensatory damages is that you should not award compensatory damages more than once for the same injury. For example, if a Plaintiff were to prevail on two claims and establish one dollar injury, you could not award him one dollar compensatory damages on each claim -he is only entitled to be made whole again, not to recover more than he lost. Of course, if different injuries are attributed to separate claims, then you must compensate him fully for all of the injuries.

In awarding compensatory damages, should you decide to award them, you must be guided by dispassionate common sense. Computing damages may be difficult, but you must not let that difficulty lead you to engage in arbitrary guesswork. On the other hand, the law does not require the Plaintiffs to prove the amount of their losses with mathematical precision, but only

with as much definiteness and accuracy as the circumstances permit.

Factors to be considered in calculating damages

You may consider the following items in order to determine the amount of damages, if any, that are attributable to the Defendant's legal fault:

1. Physical harm to a Plaintiff during and after the event at issue, including ill health, physical pain, disability, disfigurement or discomfort, and any such physical harm that Plaintiff is reasonably certain to experience in the future. In assessing such harm, you should consider the nature and extent of the injury and whether the injury is temporary or permanent;
2. Emotional and mental harm to the Plaintiff during and after the events at issue. The Plaintiff has the burden of showing the nature and extent of the mental injury related to the claim he is asserting against the Defendant, but need not provide medical evidence or expert testimony to prove this emotional distress.
3. The reasonable value of medical care, services, and supplies reasonably required and actually given in the treatment of the Plaintiffs, and the reasonable present value of similar items that will probably be required and given in the future.

4. The reasonable value of legal services incurred as a result of proceedings caused by Defendant Shedd's acts.
5. The reasonable value of working time and employment lost as a result of the proceedings caused by Shedd's acts. In computing loss of earnings, you must not include any periods of time when the Plaintiff was able to work, whether he actually worked or not.
6. The reasonable value of rent Plaintiff Ernest Simuro was required to pay for a local apartment during the time he was required to live away from his home.

Factors not to be considered in determining damages

In determining the amount of damages to award to the Plaintiffs, you must consider only the evidence in the case. You must not consider, discuss, or speculate upon any events, factors, possibilities or other matters not admitted in evidence. The only proper consideration is what amount of money will fully, fairly, and adequately compensate the Plaintiffs for the injuries they have sustained as you find from the evidence. You may not consider or speculate on whether the Plaintiffs have received benefits from other sources in connection with their injuries. Finally, you should not add any sum to such an award to compensate for presumed income tax.

Nominal damages

A person whose constitutional rights were violated is entitled to recognition of that violation, even if he suffered no actual injury. Therefore, if you return a verdict for a Plaintiff on his federal constitutional claims, but that Plaintiff has failed to prove compensatory damages, then you must award nominal damages of \$1.00. However, if you find that Plaintiff has proven an actual injury, you must award compensatory damages (as I instructed you), rather than nominal damages.

Punitive Damages

If you find that the Defendant is liable for the Plaintiffs' injuries, then you have the discretion to award, in addition to compensatory or nominal damages, punitive damages. With respect to the Plaintiffs' federal claims, you may award punitive damages if the Plaintiff proves by a preponderance of the evidence that the Defendant's conduct is motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others.

Under Vermont law, you may award punitive damages only if the Plaintiff has proven that (1) the Defendant's wrongful conduct was outrageously reprehensible; and (2) the Defendant acted with malice. Malice is defined as bad motive, ill will, personal spite or hatred or reckless indifference to harm. However, an award of punitive damages based on reckless or

wanton misconduct requires evidence that the Defendant acted, or failed to act, in conscious and deliberate disregard of a known, substantial and intolerable risk of harm to the Plaintiff, with the knowledge that the acts or omissions were substantially certain to result in the threatened harm.

The purpose of punitive damages is to punish a Defendant for shocking conduct and to set an example in order to deter him or her and others from committing similar acts in the future. The awarding of punitive damages is within your discretion -you are not required to award them. Punitive damages are appropriate only for especially shocking and offensive misconduct. If you decide to award punitive damages, you must use sound reason in setting the amount -it must not reflect bias, prejudice, or sympathy toward any party. But the amount may be as large as you believe necessary to fulfill the purpose of punitive damages. In this regard, you may consider the financial resources of the Defendant in fixing the amount of punitive damages.

I have previously instructed you that you should not award compensatory damages more than once for the same injury. With respect to punitive damages, however, you may make separate awards on each claim that is established, even if the injury resulting from each claim is the same.

Mitigation of damages

A person who has suffered harm by the wrongful act of another is obligated to exercise reasonable care and effort to avoid loss and to minimize, or "mitigate," the damages. He or she may not recover for losses which could have been prevented by him or her making reasonable efforts without undue risk or expense on his or her part.

Once the Plaintiffs have proved that they suffered damages, it is the Defendant's burden to prove that any of those damages reasonably could have been avoided. In deciding whether to reduce the Plaintiffs' damages due to some failure to mitigate on their part, therefore, you must weigh all the evidence in light of the particular circumstances of the case, using sound discretion in deciding whether the Defendant has satisfied its burden of proving that the Plaintiffs could have avoided the damages in question.

VERDICT BASED UPON EVIDENCE

Your verdict in this case must be based solely upon the evidence presented at the trial of this case, whether testimonial or documentary, and legitimate inferences to be drawn therefrom. Your verdict may not be based upon sympathy for a party, prejudice, passion, speculation or conjecture.

UNANIMOUS VERDICT

Your verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree. That is, 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 violence to your individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with other jurors. In the course of your deliberations, do not hesitate to reexamine your own views, and to change your opinion if you become 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 other jurors, or for the mere purpose of returning a verdict.

Remember at all times that you are not partisans. You are judges--the judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

NOTES

You may have taken notes during the trial for use in your deliberations. These notes may be used to assist your recollection of the evidence, but your memory, as jurors, controls. Your notes are not evidence, and should not take precedence over your independent recollections of the evidence. The notes that you took are strictly confidential. Do not

disclose your notes to anyone other than your fellow jurors. Your notes should remain in the jury room and will be collected at the end of the case.

CLOSING INSTRUCTIONS

I have selected _____ to act as your foreperson. The foreperson will preside over your deliberations, and will be your spokesperson here in Court. A copy of this charge will go with you into the jury room for your use.

A verdict form has been prepared for your convenience. You will take this form to the jury room. Each of the questions on the verdict form requires the unanimous answer of the jury. Your foreperson will write the unanimous answer of the jury in the space provided opposite each question, and will date and sign the form when it is completed.

If it becomes necessary during your deliberations to communicate with the Court, you may send a note through the Courtroom Security Officer, signed by your foreperson. No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing, and the Court will never communicate with any member of the jury on any subject touching the merits of the case otherwise than in writing, or orally here in open Court. All other persons are also 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 the Court--how the jury stands, numerically or otherwise, on the questions before you, until after you have reached a unanimous verdict.

Dated at Burlington, in the District of Vermont, this 18th day of November, 2016.

/s/ William K. Sessions III
William K. Sessions III
District Court Judge