

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

Lisa M. LaRoche,
Plaintiff,

v.

David Solomon, individually,
and in his capacity as a
South Burlington Police
Officer,
Defendant.

:
:
:
: File No. 2:01-CV-321
:
:
:
:
:

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.

The plaintiff in this case is Lisa LaRoche. Ms. LaRoche claims that the Defendant, Officer David Solomon of the South Burlington Police Department, injured her during a traffic stop. Officer Solomon admits that he used force, but claims that the amount of force he used was reasonable. Ms. LaRoche has asserted the following claims:

1. Violation of the Federal Civil Rights Act;
2. Battery; and

3. Intentional Infliction of Emotional Distress.

Ms. LaRoche seeks both compensatory and punitive damages. Officer Solomon denies Ms. LaRoche's claims and her entitlement to damages. He also asserts that the amount of force used during the traffic stop was lawful and reasonable under the circumstances.

Ms. LaRoche has the burden of proof in this case and must prove each element of her claim by a preponderance of the evidence. Officer Solomon has the burden of proof by a preponderance of the evidence on his claim of qualified immunity, which I will explain later. I will explain what preponderance of the evidence means and the elements of each of Ms. LaRoche's claims.

General Instructions

It is your duty as jurors to apply the law that I give you to the facts that you find from the evidence. Your final role is to consider and decide the fact issues of the case. You are the sole and exclusive judges of the facts. You weigh the evidence, resolve conflicts in the evidence, determine the credibility of

witnesses, and if warranted, draw inferences from the facts as you find them. Shortly, I will define the word "evidence" for you and instruct you on how to assess it, including how to weigh the credibility or believability of witnesses.

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 is or ought to 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 these instructions and anything other than the evidence presented in this case. Even though counsel may have mentioned a principle of law during his or her argument, you must only consider the law as given to you in these instructions when reaching your verdict.

It is the sole province of the jury to determine the facts in this case. By these instructions, I do not intend to indicate in any way how you should decide any

question of fact. Except for instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your findings of fact. I recognize that a judge can have significant influence on a jury. If you think you have perceived some opinion of how I think this case should be decided, I want you not to consider that at all. I am merely the judge here. It is my responsibility to rule on the objections made by counsel and upon the law. It is your sole responsibility to decide the facts and apply the law to those facts.

You are to discharge your duty as jurors in an attitude of complete fairness and impartiality. You should weigh the evidence calmly and deliberately and without the slightest trace of sympathy, bias or prejudice for or against either party. All parties expect that you will carefully consider all of the evidence, follow the law as it is now being given to you and reach a just verdict. In rendering the verdict, you are not to consider the financial or legal consequences

of that verdict or its possible impact on any of the parties, except on the issue of punitive damages, which I will explain later. Furthermore, the mere fact that the plaintiff brought this lawsuit or may have sustained damages is not in and of itself sufficient to render a verdict for the plaintiff.

Evidence

"Evidence" includes in-court sworn testimony of the witnesses given both on direct and cross examination, out of court testimony read from a deposition or shown in a videotape, interrogatories and exhibits admitted into the record, facts judicially noticed by me and facts that have been stipulated. Depositions are testimony of a witness given under oath before trial. A stipulation occurs when all parties agree that certain facts are true.

As I have stated earlier, it is your duty to determine the facts, and in doing so, you may consider only the evidence I have admitted. You should treat any exhibit or testimony that I ordered stricken or excluded

from the record as if you never saw or heard it. Any evidence that I have instructed you to consider for a limited purpose must be considered only for that limited purpose. Although the lawyers may call your attention to certain facts or inferences that might otherwise go unnoticed, the lawyers' statements, objections and arguments are not evidence in the case. Likewise when an attorney seeks an objection or requests a conference at the bench, you should draw no inferences either positive or negative from such actions. In the final analysis, it is your recollection and interpretation of the evidence that controls in this case, not any statement or implication that I or the lawyers have made in reference to the evidence.

While you should not speculate or guess about evidence not admitted into the record, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in light of common experience. In other words, you may make deductions and reach conclusions which reason and common

sense lead you to draw from the facts as they have been established by the evidence in the case. However, in arriving at your verdict, you may not consider any personal knowledge or information pertaining to the facts of this case that you had acquired prior to or during this case that have not been admitted into evidence.

The law recognizes two types of evidence: direct and circumstantial. 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 consist of a physical object or document which in your mind establishes a particular fact. Circumstantial evidence is evidence that does not directly prove a fact but points to the existence of that fact. Using reason, experience and common sense, you infer the existence or non-existence of some fact from established facts. For example, if you go to bed at night and there is no snow on the ground and you wake up the next morning and there

is snow on the ground, you could reasonably infer that it snowed during the night even though you did not see it snow. The law makes no distinction between the weight to be given to either direct or circumstantial evidence, but a verdict must be based on all evidence presented.

Stipulations

The parties can, and have in this case, stipulated to certain facts which they have admitted are true. A stipulation of facts is an agreement among the parties that a certain fact is true. You must regard such agreed facts as true. Thus, you must find the following facts to be established, regardless of the evidence or testimony you have heard or seen, and include them in your deliberations and decisions.

1. Ms. LaRoche is twenty-nine years old. She is a resident of Shelburne, Vermont.

2. Officer Solomon is a resident of South Burlington, Vermont and has been a South Burlington police officer since March 2001. At all times herein, Officer Solomon was acting under color of state law.

3. On or about September 19, 2001, Plaintiff was traveling south on U.S. Route 7 in South Burlington, Vermont in her car (SUV), accompanied by her then eight-year-old daughter.

4. On September 19, 2001, she was ticketed by Officer Darren Beers of the South Burlington Police Department for expired vehicle registration. She was also investigated at that time for possibly driving under the influence of alcohol.

5. Officer Solomon arrived onto the scene and was present during portions of the DUI investigation.

6. Ms. LaRoche's thumb was injured during this encounter with Officer Solomon.

Credibility of Witnesses

As jurors, you are the sole judges of the credibility or believability of the witnesses. It is your responsibility to determine the weight to be given to the testimony of each witness. You do not have to accept all the evidence presented in this case as true or accurate. In weighing the testimony you can take

into account the witness's ability and opportunity to observe; the manner and conduct of the witness while testifying; any interest, bias, or prejudice the witness may have; the witness's relationship to the parties; the extent to which other evidence supports or contradicts the witness's testimony; and the reasonableness of the witness's testimony.

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. The fact that one party called more witnesses and introduced more evidence than the other does not mean that you should necessarily find the facts in favor of that party.

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 have a different point of view.

regarding the same occurrences. Innocent misrecollection or failure of recollection is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail and whether the discrepancy results from innocent error or intentional falsehood. After making your own judgment, you will give the testimony of each witness such weight, if any, that you may think it deserves. You may accept or reject the testimony of any witness in whole or in part.

Burden of Proof

In a civil case such as this, the plaintiff has the burden to prove every essential element of her claim by a preponderance of the evidence. In a few minutes I will instruct you on the elements of the plaintiff's claims. If the plaintiff should fail to establish any essential element of any of her claims by a preponderance of the evidence, you must find for the defendant as to that claim.

A preponderance of the evidence means such evidence, when considered and compared with that opposed to it, has a more convincing force and produces in your mind a belief that what is sought to be proved is more likely true than not true. In other words, to establish a claim by a preponderance of the evidence merely means to prove that the claim is more likely so than not so. It does not mean the greatest number of witnesses or exhibits. In determining whether a 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 into evidence regardless of who may have produced them.

Plaintiff's Excessive Force Claim Under 42 U.S.C. 1983

It is now my duty to give you instructions on the legal theories that apply to this case.

Ms. LaRoche claims that Officer Solomon used excessive force in an effort to detain her at a traffic stop on September 19, 2001. She claims that his actions

caused her both physical injury and emotional distress, and deprived her of her constitutional right not to be subjected to unreasonable force by a police officer.

Officer Solomon claims that the force he used was reasonable under the circumstances.

Under the United States Constitution, a person has a right to be free from the use of unreasonable force during the course of an investigatory stop or arrest, even if the stop or arrest is otherwise lawful. Section 1983 of Title 42 of the United States Code provides that the plaintiff may seek damages in this Court against any person or persons who, under color of state law or custom, subject her to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution of the United States.

In order to prove her claim, the burden is on Ms. LaRoche to establish by a preponderance of the evidence, each of the following elements:

1. That at the time of the incident, Officer Solomon was acting under color of the authority of the

State of Vermont.

As I have already discussed, the parties have stipulated that Officer Solomon was acting under the color of state law when the incident occurred.

Consequently, Ms. LaRoche has met the first element of this claim.

2. That Officer Solomon performed acts that deprived Ms. LaRoche of one or more of her constitutional rights, as explained by the Court in these instructions, by using excessive force against her during the course of an investigatory traffic stop; and

3. That Officer Solomon's acts were a proximate cause of the damages sustained by Ms. LaRoche.

Excessive Force

Ms. LaRoche claims that unreasonable force was used on her during the course of an investigatory stop when Officer Solomon restrained her. A claim for excessive force is based on a violation of the Fourth Amendment of the United States Constitution. A law enforcement officer only has the right to use such force as is

objectively reasonable under the circumstances. Ms. LaRoche must establish that, under the totality of the circumstances, Officer Solomon used a level of force that was unreasonable. Whether the force Officer Solomon used was reasonable or unreasonable is to be determined by you in light of the evidence received in this case.

You must determine the degree of force that a reasonable and prudent police officer would have applied under the circumstances shown from the evidence received in this case. In making this determination, you may consider factors such as the severity of the offense at issue, whether Ms. LaRoche posed an immediate threat to the safety of the officers or others, and whether she was actively resisting arrest or attempting to evade arrest by flight. You do not have to determine whether Officer Solomon had less intrusive alternatives available. The Defendant is only required to act reasonably under the circumstances.

The reasonableness of a particular use of force must

be judged from the perspective of a reasonable officer on the scene, rather than with the benefit of hindsight. You have heard testimony regarding facts and circumstances that were not known to Officer Solomon at the time that he used force on Ms. LaRoche. You must not consider this evidence in determining whether the amount of force Officer Solomon used was excessive. You must consider only what Officer Solomon knew at the time the force was used, and should not consider anything he may have found out after the fact. In addition, remember that not every push or shove, even if it may later seem to have been unnecessary, violates the Fourth Amendment's proscription of excessive force. The mere fact of injury alone does not establish the use of excessive force.

Whether a particular use of force was reasonable is an objective inquiry; in other words, the question is not whether Officer Solomon felt that his actions were reasonable, but whether his actions were objectively reasonable in light of the facts and circumstances

confronting him, without regard to his underlying intent or motivation. If you find that the amount of force used was greater than a reasonable officer would have employed, Ms. LaRoche will have established the claim of a loss of a federal right.

Proximate Cause

If you find that Officer Solomon used excessive or unreasonable force on Ms. LaRoche during the investigatory stop, you must proceed to consider whether Officer Solomon's acts were a proximate cause of the damages to Ms. LaRoche.

Proximate cause means there must be a sufficient causal connection between the act or omission of a defendant and any injury or damage to the plaintiff. An act or omission is a proximate cause if it was a substantial factor in bringing about or causing injury. If an injury was a direct result or a reasonably probable consequence of a defendant's act or omission, it was proximately caused by the act or omission. In other words, if a defendant's act or omission had such

an effect in producing the injury that reasonable persons would regard it as being a cause of the injury, then the act or omission is a proximate cause. There can be more than one proximate cause, and Officer Solomon is liable for damages suffered by Ms. LaRoche if his actions were one of the proximate causes.

Battery

Ms. LaRoche also claims that Officer Solomon's actions constituted a battery upon her.

Battery is the unlawful or unwarranted use of force upon another. A person is liable for battery if:

1. He intends to cause a harmful or offensive contact with another; and
2. A harmful contact with another results.

A contact is harmful if it causes the physical impairment of another's body or if it causes pain or illness to another person.

A police officer may commit battery when the battery consists of force reasonably necessary. Therefore, you may only find Officer Solomon liable for battery on Ms.

LaRoche if you find that he intended to inflict, and did inflict, a harmful and unwarranted contact upon Ms. LaRoche and that such contact was in excess of the appropriate and reasonable force that an officer would use.

If you find that Officer Solomon intended to and did engage in actions that caused bodily harm to Ms. LaRoche, and that his actions were in excess of the appropriate and reasonable force that an officer would use, then you must find for Ms. LaRoche on this claim. If, however, you find that Officer Solomon's actions were appropriate and reasonable, you must find for Officer Solomon on this claim even if his actions resulted in bodily harm to Ms. LaRoche.

Intent

Intent ordinarily may not be proved directly because there is no way of fathoming or scrutinizing the operations of the human mind. You may infer a person's intent from the surrounding circumstances, however. You may consider any statement made or act done or omitted

by a person whose intent is at issue, and all other facts and circumstances which indicate the party's state of mind.

You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted. It is for you to decide what facts have been established by the evidence.

Intentional Infliction of Emotional Distress

Ms. LaRoche claims that Officer Solomon, through his conduct on the night of September 19, 2001, intentionally inflicted emotional distress upon her. To succeed on her claim, Ms. LaRoche has the burden of proving, by the preponderance of the evidence:

1. That Officer Solomon's conduct was extreme and outrageous;
2. That he acted intentionally, or with reckless disregard of the probability that his actions would cause extreme emotional distress; and
3. That his conduct did result in Ms. LaRoche

suffering extreme emotional distress.

Extreme and outrageous conduct is conduct that goes beyond the scope of acceptable behavior in a community and is intolerable. Abuse of authority may constitute extreme and outrageous behavior, but mere insults, indignities, or petty oppressions do not.

The second element is whether Officer Solomon acted with intent, or at least with reckless disregard of causing extreme emotional distress. Reckless means the intentional disregard of the consequences of one's actions. In other words, a person acts recklessly when he acts with a deliberate disregard of a high degree of probability that emotional distress will result from his conduct.

Finally, Ms. LaRoche must show that Officer Solomon's conduct caused her to suffer extreme emotional distress. There can be no liability if you find that the distress suffered by Ms. LaRoche was not extreme. You must look solely to Ms. LaRoche in determining the degree of distress; even though her family and friends may have

considered Officer Solomon's conduct outrageous or may have been distressed by it, their feelings are of no account with respect to the question of liability.

Affirmative Defense: Qualified Immunity

At the time of the incidents giving rise to this lawsuit, it was clearly established law that Ms. LaRoche had the right to be free from excessive force and battery. Even if you find that Officer Solomon did violate Ms. LaRoche's rights as described above, Officer Solomon still might not be liable to Ms. LaRoche. This is so because Officer Solomon may be entitled to what is called qualified immunity. If you find that he is entitled to such immunity, you may not find him liable.

Officer Solomon is entitled to qualified immunity if, at the time he violated Ms. LaRoche's rights as stated above, he neither knew nor should have known that his actions were contrary to federal or state law. The simple fact that Officer Solomon acted in good faith or was unaware of the law is not enough to bring him within the protection of this qualified immunity. Officer

Solomon is entitled to qualified immunity only if he did not know that what he did was in violation of federal or state law and if a competent police officer could not have been expected at the time to know that the conduct was in violation of federal or a state law.

In deciding what a competent police officer would have known about the legality of the Defendant's conduct, you may consider the nature of the Defendant's official duties, the character of his official position, the information which was known to the Defendant or not known to him, and the events confronting him. You must ask yourself what reasonable police officers in the Defendant's situation would have believed about the Defendant's conduct. You should not, however, consider what the Defendant's subjective intent was, even if you believe it was harmful to the Plaintiff. You may also use your common sense. If you find that a reasonable police officer in the Defendant's situation would believe his conduct to be lawful, then this element will be satisfied. Moreover, if you find that reasonably

competent police officers could disagree about the legality of the Defendant's actions, then the Defendant is entitled to qualified immunity.

Officer Solomon has the burden of proving that he neither knew nor should have known that his actions violated the law. If Officer Solomon convinces you by a preponderance of the evidence that he neither knew nor should have known that his actions violated the law, then you must return a verdict for Officer Solomon, even if you previously found that Officer Solomon in fact violated Ms. LaRoche's rights.

Department Regulations and Training Manuals

There has been evidence introduced of the South Burlington Police Department's use of force guidelines and various training manuals on the use of force. You should understand that this evidence does not establish the legal standard you must follow in deciding the reasonableness of Officer Solomon's use of force. Rather, this evidence has been submitted to you merely to serve as guidance in evaluating Officer Solomon's

conduct and whether Ms. LaRoche has met her burden of proof on her claims as I have explained them to you. You may give this evidence whatever weight, if any, you deem appropriate.

Damages

If you find for Officer Solomon on the question of liability, you will have no occasion to consider the question of damages.

The fact that I am about to instruct you as to the proper measure of damages should not be considered as intimating any view of mine as to which party is entitled to your verdict in this case. Instructions as to the measure of damages are given for your guidance, in the event you find in favor of Ms. LaRoche by a preponderance of the evidence in the case in accordance with the other instructions.

In reaching your verdict in this case, you must carefully consider the evidence presented against Officer Solomon. You may assess damages against Officer Solomon only if you find him liable under the claims as

I have outlined above.

Compensatory Damages

If you find for Ms. LaRoche on any of her claims, you must determine her damages. Ms. LaRoche has the burden of proving her damages by the preponderance of the evidence. Damages means the amount of money that will reasonably and fairly compensate Ms. LaRoche for the deprivation of civil rights and/or battery and/or intentional infliction of emotional distress caused by Officer Solomon. Damages may not be based on speculation or sympathy. The purpose of compensatory damages is to make Ms. LaRoche whole, to compensate her for any damage that she suffered. The purpose of compensatory damages is not to punish a defendant or reward a plaintiff. They must be based upon the evidence presented at trial and only that evidence. You must be guided by the amount of loss that was actually incurred.

You should consider the following elements of damage to the extent you find them proved by a preponderance of

the evidence, and no others:

1. The reasonable cost of Ms. LaRoche's medical care and hospitalization;
2. Ms. LaRoche's physical pain and suffering;
3. Ms. LaRoche's personal humiliation and mental anguish; and
4. Punitive damages, as I will explain them in a moment.

Where the amount of damages is capable of being calculated in dollars and cents, such as with medical expenses, Ms. LaRoche must demonstrate the amount of her loss in dollars and cents. Where the amount of damages is not capable of being calculated in dollars and cents, such as with assertions of pain and suffering, Ms. LaRoche is not required to demonstrate the exact dollar and cents value of the injury. Nonetheless, Ms. LaRoche is still required to submit to you evidence of such a quality and quantity that you are capable of reasonably estimating the extent of the loss suffered.

The measure of damages awarded for pain and suffering

should be equivalent to reasonable compensation for any pain, discomfort, fear, anxiety, and other mental or emotional distress suffered by her which were proximately caused by Officer Solomon. No definite standard or mathematical formula is prescribed by law by which to fix reasonable compensation for pain and suffering. You must exercise your authority with calm and reasonable judgment, and the damages you fix must be just and reasonable in light of the evidence. If you determine that the Plaintiff is entitled to compensatory damages, you shall enter that total amount on the last page of the verdict form.

Punitive Damages

If you find for Ms. LaRoche and determine that she is entitled to recover actual damages, only then may you consider whether punitive damages should be allowed. If you find that Officer Solomon acted with malice or with reckless disregard when he violated Ms. LaRoche's civil rights and/or committed an act of battery on her and/or intentionally inflicted emotional distress on her, then,

in addition to any other damages to which you find Ms. LaRoche is entitled, you may, but are not required to, award Ms. LaRoche an additional amount as punitive damages.

In making an award of punitive damages, you should consider that punitive damages serve two purposes: first, to punish Officer Solomon for conduct warranting a punitive damages award; and second, to deter Officer Solomon and other law enforcement officials from engaging in similar conduct in the future.

To warrant an award of punitive damages, Ms. LaRoche must prove by a preponderance of the evidence that:

1. Officer Solomon's conduct manifested personal ill will; or
2. His conduct was carried out under circumstances evidencing insult or oppression; or
3. His conduct showed a reckless and wanton disregard of Ms. LaRoche's rights.

An act or failure to act is "maliciously" done if prompted or accompanied by ill will, spite, or grudge,

either toward the injured person individually or toward all persons in one or more groups or categories of which the injured person is a member.

An act or failure to act is "wantonly" done if done in reckless or callous disregard of, or indifference to, the rights of one or more persons, including the injured person.

An act or failure to act is "oppressively" done if done in a way or manner that injures or damages or otherwise violates the rights of another person with unnecessary harshness or severity, as by misuse or abuse of authority or power, or by taking advantage of some weakness, disability, or misfortune of another person.

Factors which you may consider in awarding punitive damages include, but are not limited to:

1. The nature of Officer Solomon's conduct;
2. The impact of Officer Solomon's conduct on Ms. LaRoche;
3. The likelihood that Officer Solomon or other law enforcement officers would repeat the conduct if a

punitive damages award is not made;

4. Officer Solomon's financial condition; and

5. Any other circumstances shown by the evidence that bear on the question of the size of any punitive damages award.

Punitive damages may not be out of proportion with the severity of the alleged offences. Thus, any punitive damages award made by you must reflect the severity of Officer Solomon's alleged unlawful conduct and the actual harm suffered.

If you determine that Officer Solomon's conduct justifies an award of punitive damages, you may, but do not have to, award such damages.

Deliberation and Verdict

You have been permitted to take notes during trial for use in your deliberations. You may take these notes with you when you retire to deliberate. They may be used to assist your recollection of the evidence, but your memory 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.

I have selected Ms. Frey to act as your foreperson. The foreperson has no greater voice or vote than any other juror but is appointed to ensure that some order is established in the manner in which you proceed and is your spokesperson here in court.

A copy of this charge will go with you into the jury room for your use.

If during your deliberations you should desire to communicate with the Court, please reduce your message to a written question signed by your foreperson. The foreperson will then submit the note to the court security officer who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you return to the courtroom so that I can address the question orally. I caution you,

however, that with regard to any message or question you might send, you should never state or specify the jury's numerical division at the time. 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 related to the merits of the case other than in writing or orally here in open Court. During deliberation, you are not to communicate with any other persons in any way or manner on any subject related to the merits of the case unless given specific permission.

A verdict form has been prepared for your convenience. You will take the verdict form into the jury room and when you have reached a unanimous agreement, you will have the foreperson fill out the verdict form, date and sign it. You will then return to the courtroom where the verdict will be read and each of you will be asked individually if this is your verdict.

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is

necessary that each juror agree to it. In other words, your verdict must be unanimous as to each claim. It is proper to add the caution that nothing said in these instructions and nothing in any verdict form is meant to suggest or convey in any way or manner any intimation as to what verdict I think you should find. Deciding what the verdict shall be your sole and exclusive duty and responsibility.

It is your duty as jurors to consult with one another and to deliberate in an effort to reach agreement. Each of you must decide the case for yourself but only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion if you are convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of the evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict. You may now retire and commence your deliberations.