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JASON DAVIS

v.

PAUL RENNIE, et al.
96-cv-11598-MEL

JURY INSTRUCTIONS

Oct. 26, 1998

1 Ladies and gentlemen, the time has now come for you
2 and me to perform our roles in the determination of this case.

3 My job is to tell you what the law is. Your job is
4 to determine what the facts of the case are and then to apply
5 the law to those facts.

6 In your determination of the facts you must rely on
your own recollection of the evidence, that is, as distinct
8 from mine or the lawyers'.

9 As I have told you several times earlier, what the
10 lawyers or I have had to say about the facts do not constitute
11 evidence.

12 In this case, as you know, Jason Davis makes a variety
13 of claims against the defendants who, for the purposes of
14 clarity, I will divide into three groups. Those groups are:

15 First: Phillip Bragg only.

16 Second: Phillip Bragg's fellow workers:

17 Paul Rennie, Richard Gillis, Michael Hanlon,
18 Jeffrey Flowers, Leonard Fitzpatrick, Nicholas L.
19 Tassone, Frantz Joseph, and Joyce Weigers.

2 Third: Edward M. Murphy, Eileen P. Elias, and
Allen J. Zampini.

1 Mr. Davis contends that each of the defendants deprived
2 him of various constitutional rights and/or imposed injuries on
3 him which violated the Massachusetts laws. To get specific, Mr.
4 Davis charges that Phillip Bragg:

5 1) violated his constitutional rights, particularly his
6 rights to be free from the use of excessive force and
7 unreasonable restraint, and deprived him of liberty without due
8 process of law;

9 2) violated his rights under Massachusetts civil
10 rights law;

11 3) committed assault and battery;

12 4) intentionally inflicted emotional distress; and

13 5) falsely imprisoned him.

14 Mr. Davis charges the Group 2 defendants with:
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16 1) depriving him of his constitutional right to liberty
17 by restraining him unreasonably and without just cause on August
18 12, 1993;

19 2) depriving him of his constitutional rights by
20 failing to intervene to protect him against the alleged assault
21 of Phillip Bragg when they were obligated to do so;

22 3) violating Massachusetts civil rights law; and

23 4) falsely imprisoning him.

24 Finally, as to Group 3, Mr. Davis charges Commissioners
25 Murphy and Elias, and hospital director Alan J. Zampini, with
26 violating his constitutional right to liberty and to be free of
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2 assault by deliberate indifference to the protection of his
3 rights. In particular, he alleges that their management of the
4 mental health system and hospital was inadequate because each of
5 them failed to establish adequate employment screening,
6 supervision, and retention processes to make sure that persons
7 employed would not be dangerous to the patients. He contends
8 that because of this alleged failure on the part of the
9 supervisors, Mr. Bragg was hired and retained and that the
10 supervisors are therefore legally responsible for any injuries
11 which he may have imposed on Mr. Davis.

12 Now, the defendants, of course, view the facts very
13 differently. To be specific: Mr. Bragg totally denies that he
14 punched or assaulted Mr. Davis on August 12, 1993, or any other
15 time; the Group 2 defendants all deny that Mr. Bragg punched or
16 assaulted Mr. Davis, and, along with Mr. Bragg, contend further
17 that there was a reasonable basis for the restraint of Mr. Davis
18 on August 12, 1993, because of his alleged threatening behavior.

19 Finally, as to Group 2, Joyce Weigers who, as you know,
20 was the nurse in charge, denies that she saw Bragg take any
21 action which would require her intervening and that in any event,
22 in the chaotic situation which she says existed in connection
23 with the "take-downs" of Mr. Davis, she acted correctly and had
24 no information to cause her to act in any way other than she did.
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Each of the Group 3 defendants, Commissioners Murphy and Elias, and house director, Mr. Zampini, strongly denies that his or her management of the system or the hospital was inadequate, and particularly, that no behavior on their part was deliberately indifferent to the welfare of any patient in the system. Indeed, Commissioner Murphy points out that it was he who established the policy for screening the employment of persons with a record to make sure that adequate information about them was secure; Commissioner Elias argues that she went further and caused a study to be made of whether any harm had been caused within the system by the employment of a person with criminal records to which the answer was: there was no such damage; and finally, Mr. Zampini testified that he legitimately delegated the responsibility for hiring new employees to well-qualified subordinates, and that this was appropriate in an institution which at one time had as many as 800 employees, and at all times as many as 400.

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Now, in every case the plaintiff, who makes the claims, has the burden or responsibility under the law to prove them. That is, Mr. Davis must establish to your satisfaction by what is called a preponderance of the evidence the claims which he makes. To say that he must prove his claims by a preponderance of the evidence, means that to prevail the plaintiff must put before you evidence which you find to be of greater weight than the evidence presented by the defendants. Put another way, for Mr. Davis to prevail, you must find it more likely than not that his rights were violated as he alleges.

Now the weight of the evidence is not to be determined by its quantity or by the specific number of witnesses. The test is what witnesses or which evidence appeals to your mind as being most accurate, persuasive or trustworthy.

Now, ladies and gentlemen, you must determine these questions solely on the basis of the evidence in this case, but in your consideration of the evidence you are not limited to the bald statements of the witnesses. You are entitled to, and in this case, as in most cases, you must, think beyond words that are uttered, and you have to determine to what extent you believe the witnesses that you have heard.



1 In deciding the many questions before you, it is your
2 job to determine the credibility of the witnesses who have
3 testified. Now how do you go about that? Perhaps the best
4 answer is to say that you determine the truthfulness or accuracy
5 or weight to be given to a witness' testimony in the same way
6 that you determine that question in your own personal affairs.

7 We are all constantly called upon, if you think about
8 it, from day to day to determine how much confidence we place in
9 the statements that people make to us. The truthfulness or
10 dependability of a witness, as that of any other person, is
11 determined by these kinds of things: the demeanor of the witness,
12 that is, his look; his or her relationship to the case and to the
13 parties; the possibility of the witness being biased or partial
14 or not being biased or partial; the stake which the witness may
15 have in the outcome of the case; the reasonableness or
16 unreasonableness of the witness' recollection; and the extent to
17 which what the witness has said has either been corroborated or
18 contradicted by testimony of other witnesses or by exhibits or
19 stipulations.

20 The ultimate question you decide in passing on the
21 credibility of a witness is the extent to which you accept the
22 witness' testimony as true. It is for the jurors alone to decide
23 the weight or credibility to be given to the testimony of a
24 witness.

25 In this case, as you know, Dr. Kleinman was called by
the plaintiff as an expert witness. The law permits experts to

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1 testify and give their opinions on the theory that the expert's
2 special knowledge may be of help to a jury. However, it is
3 entirely for you, members of the jury, to decide what weight you
4 wish to give to Dr. Kleinman's testimony, and you must determine
5 whether you find it convincing or not.

6 One final comment before I get to the specific claims
7 of Mr. Davis. There are 12 defendants in this action. However,
8 it does not follow from that fact that if one is liable, any
9 other one is liable. Each defendant is entitled to a separate
10 consideration of his or her defense, and his or her liability
11 must be separately determined by the jury.

12 Let me now discuss with you what the plaintiff must
13 establish as to each of his claims in order to prevail.

14 I will take the charges against Mr. Bragg first.
15 To prevail on the claim that Mr. Bragg DEPRIVED MR. DAVIS
16 OF HIS CONSTITUTIONAL RIGHTS, Mr. Davis must establish by a
17 preponderance of the evidence three propositions:

18 First: That Mr. Bragg was acting under the color of
19 state law on August 12, 1993. There is no dispute about this
20 point. Mr. Bragg was acting under color of state law on August
21 12, and you can take that proposition as established.

22 Second: Mr. Davis must prove that Mr. Bragg's conduct
23 deprived him of his right to be free of unlawful restraint or
24 the use of excessive force, and

25 Third: That any such restraint or assault, if you find
26 it occurred, was the proximate cause of Mr. Davis' injuries and

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1 damages.

2 As to the claim that Mr. Bragg DEPRIVED MR. DAVIS OF
3 HIS CIVIL RIGHTS UNDER MASSACHUSETTS LAW, Mr. Davis must prove
4 the items I have just specified with regard to deprivation of
5 federal constitutional rights and must also establish that this
6 deprivation was brought about by the use of threats,
7 intimidation, or coercion.

8 As to both the claim of violation of federal and Massa-
9 chusetts civil rights, the question in this case is whether Mr.
10 Bragg used excessive force in his dealing with Mr. Davis. The
11 question of whether force is excessive or not is to be determined
12 by whether a reasonable mental health worker in the circumstances
13 which faced Mr. Bragg on August 12, 1993, would have acted as you
14 find Mr. Bragg to have acted. To decide this question, you must
15 reach a conclusion as to what Mr. Bragg actually did on August
16 12, 1993, and whether a reasonable mental health worker in
17 Bragg's position would or would not have acted as he did.

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19 I now come to the question of ASSAULT. To prevail on
20 his claim against Mr. Bragg for assault, Mr. Davis must prove by
21 a preponderance of the evidence that (1) Phillip Bragg
22 intentionally created an apprehension in Jason Davis' mind that
23 he was in danger of sustaining immediate physical harm, and (2)
24 that this apprehension was reasonable.
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1 As to the claim of BATTERY against Mr. Bragg:
2 to prevail on this claim, Mr. Davis must establish by a
3 preponderance of the evidence that Mr. Bragg intended to or
4 actually did bring about a so-called harmful or offensive
5 contact. In this case that refers Mr. Bragg's alleged punching.
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7 The last claim against Mr. Bragg is for INTENTIONAL
8 INFLICTION OF EMOTIONAL DISTRESS. To prevail on this claim, Mr.
9 Davis must establish by a preponderance of the evidence: first,
10 that Phillip Bragg intended to inflict emotional distress on Mr.
11 Davis, or knew or should have known that emotional distress was
12 the probable result of his conduct; second, that Bragg's conduct
13 was extreme and outrageous and beyond all possible bounds of
14 decency; and third, that Bragg's conduct was utterly intolerable
15 in a civilized community.
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17 The final allegation against Mr. Bragg is FALSE
18 IMPRISONMENT. In order to prove that claim, Mr. Davis must
19 establish by a preponderance of the evidence (1) that Mr. Bragg
20 intentionally and wrongfully restrained Mr. Davis, depriving him
21 of freedom of movement on August 12, 1993; (2) that Mr. Davis was
22 conscious; and (3) that Mr. Davis was harmed by the restraint.
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1 I now come to the claims against the Group 2
2 defendants. To the extent that the claims against them are the
3 same as the claims against Mr. Bragg, you follow the instructions
4 I have just given about the claims against Mr. Bragg. However,
5 as you will recall, there are charges made against the Group 2
6 defendants beyond those made against Mr. Bragg. I will now
7 discuss those.

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9 First: Mr. Davis contends that the Group 2 defendants
10 deprived him of his constitutional rights under federal and
11 Massachusetts law by FAILING TO INTERVENE TO PROTECT HIM FROM MR.
12 BRAGG'S ALLEGED ASSAULT. To prevail on this claim, Mr. Davis
13 must establish by a preponderance of the evidence as to each
14 defendant separately:

15 1) That that defendant was present at the scene of
16 the alleged excessive use of force by Mr. Bragg at the time it
17 occurred;

18 2) That that defendant actually observed the alleged
19 excessive use of force by Mr. Bragg;

20 3) That that defendant was in a position where he or
21 she could realistically prevent the alleged use of excessive
22 force by Phillip Bragg; and

23 4) That there was sufficient time available to that
24 defendant to prevent the alleged excessive use of force.

25 In sum, on this claim against the Group 2 defendants,
26 you must determine as to each defendant whether he or she



1 actually knew of Mr. Bragg's alleged punching, whether he or she
2 could have prevented it, whether there was enough time to do so,
3 and whether he or she failed to do so.

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5 Finally, as to certain of the Group 2 defendants (and Mr.
6 Bragg himself), Mr. Davis charges that the two so-called "take-
7 downs" of him on August 12, 1993 VIOLATED HIS CONSTITUTIONAL
8 RIGHT TO BE FREE FROM UNREASONABLE BODILY RESTRAINT. In
9 determining whether there was any such unreasonable restraint,
10 you should consider all the circumstances existing at the time
11 and decide as to each defendant separately whether in light of
12 those circumstances it was appropriate for that defendant to use
13 the force that was used. All of the co-worker defendants are
14 charged with unreasonably restraining Mr. Davis in violation of
15 his constitutional rights with respect to the "take-down" in the
16 hallway. Only Messrs. Rennie, Bragg and Hanlon are charged with
17 respect to the take-down in the open quiet room.

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19 I come now to the Group 3 defendants, Commissioners
20 Murphy and Elias and the hospital director, Mr. Zampini. As you
21 will recall, Mr. Davis makes charges against them as supervisors
22 of the mental health system, or the hospital itself. A person in
23 a supervisory position may be held liable for the deprivation of
24 another person's constitutional rights if the supervisor
25 formulates a policy or engages in a practice that leads to a
26 civil rights violation committed by another. In order to prove

1 his claims against any of the Group 3 defendants, Mr. Davis must
2 establish, as to each Group 3 defendant separately, by a
3 preponderance of the evidence, that:

- 4 1) a grave risk of harm existed as to Mr. Davis;
- 5 2) the particular defendant in question actually knew
6 or should have known of that risk, and
- 7 3) the particular defendant failed to take easily
8 available measures to address that risk, and
- 9 4) that there was an affirmative connection between
10 that defendant's conduct and his or her subordinate's
11 violative act.

12 In this case, that means that to find a supervisor
13 liable, you have to find that the alleged culpable conduct of the
14 supervisor was affirmatively connected to either Mr. Bragg's
15 alleged use of excessive force or at least one of the alleged
16 unreasonable restraints.

17 In this connection, I instruct you that Mr. Davis must
18 establish not only that Mr. Bragg's record was inadequately
19 screened, but that the inadequate screening reflected deliberate
20 indifference by the supervisory defendant to the risk that a
21 patient's welfare or safety would follow from the inadequate
22 screening.

23 To establish the liability of a supervisor, it must be
24 demonstrated that the supervisor's conduct or inaction amounted
25 to reckless, callous, or deliberate indifference to the
26 constitutional rights of Mr. Davis. That does not mean that Mr.

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1 Davis has to prove that any of the supervisors intended to harm
2 him. Conduct is said to be reckless, callous, or deliberately
3 indifferent if a supervisor realizes or, from the facts which
4 he knows, should realize that there is a strong likelihood that
5 harm may result from his action or inaction even though he hopes
6 that his conduct will prove harmless. Put another way,
7 deliberate indifference occurs when it would be manifest to any
8 reasonable official that his or her conduct was ~~intentionally~~ ^{? probably} to
9 violate an individual's constitutional rights.

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11 ~~to cause or to be the cause of a person's death or serious bodily injury or to~~
12 ~~know or to be reckless as to whether his conduct would cause or to be the cause of~~

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16 Now, if you find that Mr. Davis has established any of
17 his claims against any of the defendants, then, but only then, do
18 you come to consider the question of damages.

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20 COMPENSATORY & PUNITIVE DAMAGES

21 The plaintiff seeks two types of damages -
22 compensatory and punitive damages. I hope that the terms
23 almost explain themselves, but I want to elaborate a little bit.

24 Compensatory damages are damages which compensate a
25 plaintiff for the injuries which a defendant wrongfully caused
26 him. They are damages which fairly and reasonably pay a
27 plaintiff for the pain and injury, including the mental anguish,

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1 that he sustained as a consequence of the defendant's violation
2 of his constitutional or state law rights.

3 Compensation for damages is intended to pay the
4 plaintiff for his past, present, and future losses, including his
5 psychiatric injuries, mental injuries, and emotional distress.

6 I cannot give you a yardstick by which to measure the
7 dollar value of pain or injury. You heard Mr. Davis' and
8 doctors' testimony about the injuries he claims he sustained.
9 You will have to determine, based on your common sense and
10 experience, what amount of money will fairly and reasonably make
11 him whole or compensate him for the physical pain and suffering
12 and the mental anguish that you find he sustained as a
13 consequence of any excessive force you find was used against him.

14 The damages must be reasonable and not based on
15 speculation or sympathy.

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17 Now I will discuss plaintiff's claims for punitive
18 damages. Punitive damages, as distinct from compensatory
19 damages, are damages awarded for the purpose of punishing a
20 defendant and to create an example which will deter him and
21 others from repeating such conduct in the future. It is entirely
22 up to you to decide whether or not punitive damages should be
23 awarded. In this respect you have considerable discretion. You
24 may decide that even though compensatory damages have been
25 awarded, you believe that no punitive damages are called for.

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1 On the other hand, you may feel that punitive damages
2 are in order, so as to punish the defendants and to create an
3 example which will deter them and others.

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5 Punitive damages are not awarded as a matter of right
6 but are awarded only if you believe that the defendants acted so
7 outrageously and evidenced such a degree of malice or callousness
8 that they deserve to be punished, and that an example and
9 deterrent is necessary to make sure that these defendants and
10 others will be less likely to engage in such conduct in the
11 future. You may award punitive damages if you find that the
12 defendant in question acted maliciously or wantonly. That is, if
13 their acts were prompted by ill will.

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15 Now, ladies and gentlemen, I have finished my
16 instructions to you as to the law. I want to say, it is
17 your duty to try the issues fairly and impartially without
18 sentimentality and with a sense of justice.

19 All of the parties stand equal before the bar of
20 justice. Your final determination of the case must be based on
21 the evidence, and each juror is entitled to his or her opinion,
22 but you are required, of course, to exchange your views with your
23 fellow jurors. That is the very purpose of jury deliberations.

24 In order to decide any one of the questions, your
25 decision must be unanimous. So you must all agree as to how each
26 one of these blanks must be filled. It is your duty to discuss

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1 among each other and to change your views if, after reasoning,
2 you believe that what you hear is more persuasive than what you
3 previously thought; but you should not give up a view
4 conscientiously held simply for convenience or for the purpose of
5 reaching a verdict.

6 Now, it is the custom, which I follow, for the juror
7 who sits in the number one seat to act as the foreperson of the
8 jury - foreman or forelady - and I am going to ask Michael Gordon
9 to do that. That doesn't mean that he will have any more
10 authority than any other juror. It simply means that he will
11 preside over your deliberations. If there are any communications
12 you wish to have with the court, he will be the one that sees
13 that that communication is put down on paper and presented to the
14 marshal who will be standing outside your door and deliver it to
15 the court.

16 ~~There are not many exhibits in this case, and,~~
17 accordingly, ~~A~~ After you are brought into the jury room, I am going
18 to have the marshal deliver to you all of the exhibits in the
19 case so that they will be right there for you to have available.

20 Now, I have come to the end of my charge. I want to
21 meet briefly with counsel in the robing room to go over my charge
22 to see if they think it needs amplification in any way. If you
23 will just wait here for a moment, we will over my charge to see
24 if they think it needs amplification in any way. If you will
25 just wait here for a moment, we will go over those things and we
26 should be back quite quickly.

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