

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

ASHLEY DIAMOND, :
 :
 Plaintiff, :
 : Civil Action No.
 v. : 5:20-cv-00453-MTT
 :
 TIMOTHY WARD, *et al.*, :
 :
 Defendants. :

DEFENDANTS’ SUPPLEMENTAL REQUESTS TO CHARGE

Defendants Sharon Lewis, Ahmed Holt, Robert Toole, Brooks Benton, Grace Atchison, and Lachesha Smith, through counsel, submit the following supplemental requests to charge numbered 20-22 for the trial in this matter scheduled for the term commencing January 17, 2023.

Respectfully submitted,

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Attorney General

Loretta L. Pinkston-Pope 580385
Deputy Attorney General

s/ Roger A. Chalmers
Roger A. Chalmers 118720
Senior Assistant Attorney General

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DEFENDANTS' REQUEST TO CHARGE NO. 20

In-Trial Instructions on News Coverage

Reports about this trial may appear in the media. The reporters may not have heard all the testimony as you have, may be getting information from people who are not under oath and subject to cross examination, may emphasize an unimportant point, or may simply be wrong.

You must not read, listen to, or watch anything about this trial. It would violate your oath as a juror to decide this case on anything other than the evidence presented at trial and on your own common sense. You must decide this case exclusively on the evidence you receive here in court.

Eleventh Circuit Pattern Jury Instruction 2.7 (Civil) (2022)

DEFENDANTS' REQUEST TO CHARGE NO. 21

Civil Rights

42 U.S.C. § 1983 Claims – Supervisor Liability

(Incorporate into Instructions for Claims against Individual Defendants / or to Follow Immediately after Defendants' Requests to Charge 7 and 8)

A Defendant is not liable simply because he or she may have supervised others as part of their job. Rather, Ashley Diamond must prove by a preponderance of the evidence that each Defendant personally participated in a violation of Ashley Diamond's constitutional rights, and the violation must be proved as to each Defendant by evidence that you find satisfies each of the elements of the claims as I have described them to you.

Eleventh Circuit Pattern Jury Instruction 5.12 (Civil) (2022) (applicable portion only)
Mathews v. Crosby, 480 F.3d 1265, 1270 (11th Cir. 2007) (personal participation required where no supervisory liability theory asserted)
Cottone v. Jenne, 326 F.3d 1352, 1360 (11th Cir. 2003) (same)

DEFENDANTS' REQUEST TO CHARGE NO. 22

**Invocation of Fifth Amendment Privilege Against Self-Incrimination
(to be read when privilege invoked and as part of instructions at close of evidence)**

Ashley Diamond [has just / has in this case] invoked her right under the Fifth Amendment of the United States Constitution against self-incrimination. A witness has a constitutional right to decline to answer a question on the ground that the answer to the question may tend to incriminate him or her.

If a witness refuses to answer a question during trial by invoking his or her constitutional right under the Fifth Amendment, the factfinder (meaning you) may draw an inference that the response to the question would have been adverse (meaning unfavorable) to the witness who refuses to answer.

Floyd v. United States,

2010 U.S. Dist. LEXIS 125247, *54-55 (M.D. Ga. Nov. 26, 2010) (Land, J.)

Baxter v. Palmigiano, 425 U.S. 308, 318, 96 S. Ct. 1551 (1976) (“[T]he Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them.”)

Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc., 561 F.3d 1298, 1304 (11th Cir. 2009) (“[I]n a civil suit . . . the court may draw adverse inferences against a party that invokes the Fifth Amendment.”)

Pyles v. Johnson, 136 F.3d 986, 997 (5th Cir. 1998)

CERTIFICATE OF SERVICE

I hereby certify that on this date I electronically filed the foregoing pleading with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

Charles Coleman, Jr.
Emma Lee Douglas
Andrea Chinyere Ezie
Bruce Warfield Hamilton
Elizabeth Littrell
Scott D. McCoy
Caitlin Joy Sandley

This 11th day of January, 2023.

s/ Roger A. Chalmers
Roger A. Chalmers