

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

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

DEFENDANTS' UPDATED REQUESTS TO CHARGE

Defendants Sharon Lewis, Ahmed Holt, Robert Toole, Brooks Benton, Grace Atchison, and Lachesha Smith, through counsel, submit the following requests to charge numbered 1-22 for the trial in this matter scheduled for the term commencing January 17, 2023.

Respectfully submitted,

Christopher M. Carr 112505
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. 1

**Duty to Follow Instructions
No Corporate Party Involved**

Your decision must be based only on the evidence presented here. You must not be influenced in any way by either sympathy for or prejudice against anyone.

You must follow the law as I explain it--even if you do not agree with the law--and you must follow all of my instructions as a whole. You must not single out or disregard any of the instructions on the law.

Eleventh Circuit Pattern Jury Instruction 3.2 (Civil) (2022)

DEFENDANTS' REQUEST TO CHARGE NO. 2

**Consideration of Direct and Circumstantial Evidence;
Argument of Counsel; Comments by the Court**

As I said before, you must consider only the evidence that I have admitted in the case. Evidence includes the testimony of witnesses and the exhibits admitted. But, anything the lawyers say is not evidence and isn't binding on you.

You shouldn't assume from anything I've said that I have any opinion about any factual issue in this case. Except for my instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own decision about the facts.

Your own recollection and interpretation of the evidence is what matters.

In considering the evidence you may use reasoning and common sense to make deductions and reach conclusions. You shouldn't be concerned about whether the evidence is direct or circumstantial.

"Direct evidence" is the testimony of a person who asserts that he or she has actual knowledge of a fact, such as an eyewitness.

"Circumstantial evidence" is proof of a chain of facts and circumstances that tend to prove or disprove a fact. There's no legal difference in the weight you may give to either direct or circumstantial evidence.

Eleventh Circuit Pattern Jury Instruction 3.3 (Civil) (2022)

DEFENDANTS' REQUEST TO CHARGE NO. 3

Credibility of Witnesses

When I say you must consider all the evidence, I do not mean that you must accept all of the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision you may believe or disbelieve any witness, in whole or in part. The number of witnesses testifying concerning a particular point doesn't necessarily matter.

To decide whether you believe any witness I suggest that you ask yourself a few questions:

- Did the witness impress you as one who was telling the truth?
- Did the witness have any particular reason not to tell the truth?
- Did the witness have a personal interest in the outcome of the case?
- Did the witness seem to have a good memory?
- Did the witness have the opportunity and ability to accurately observe the things he or she testified about?
- Did the witness appear to understand the questions clearly and answer them directly?
- Did the witness' testimony differ from other testimony or other evidence?

Eleventh Circuit Pattern Jury Instruction 3.4 (Civil) (2022)

DEFENDANTS' REQUEST TO CHARGE NO. 4

**Impeachment of Witness Because of
Inconsistent Statements or Felony Conviction**

You should also ask yourself whether there was evidence that a witness testified falsely about an important fact. And ask whether there was evidence that at some other time a witness said or did something, or didn't say or do something, that was different from the testimony the witness gave during this trial.

To decide whether you believe a witness, you may consider the fact that the witness has been convicted of a felony or a crime involving dishonesty or a false statement.

But keep in mind that a simple mistake doesn't mean a witness wasn't telling the truth as he or she remembers it. People naturally tend to forget some things or remember them inaccurately. So, if a witness misstated something, you must decide whether it was because of an innocent lapse in memory or an intentional deception. The significance of your decision may depend on whether the misstatement is about an important fact or about an unimportant detail.

Eleventh Circuit Pattern Jury Instruction 3.5.2 (Civil) (2022)

DEFENDANTS' REQUEST TO CHARGE NO. 5

Expert Witness

When Expert Fees Represent a Significant Portion of the Witness's Income

When scientific, technical or other specialized knowledge might be helpful, a person who has special training or experience in that field is allowed to state an opinion about the matter.

But that doesn't mean you must accept the witness's opinion. As with any other witness's testimony, you must decide for yourself whether to rely upon the opinion.

When a witness is being paid for reviewing and testifying concerning the evidence, you may consider the possibility of bias and should view with caution the testimony of such witness where court testimony is given with regularity and represents a significant portion of the witness's income.

Eleventh Circuit Pattern Jury Instruction 3.6.2 (Civil) (2022)

DEFENDANTS' REQUEST TO CHARGE NO. 6

**Burden of Proof
When Only Plaintiff Has Burden of Proof**

In this case it is the responsibility of the Plaintiff to prove every essential part of her claims by a “preponderance of the evidence.” This is sometimes called the “burden of proof” or the “burden of persuasion.”

A “preponderance of the evidence” simply means an amount of evidence that is enough to persuade you that the Plaintiff’s claim is more likely true than not true.

If the proof fails to establish any essential part of a claim or contention by a preponderance of the evidence, you should find against the Plaintiff.

When more than one claim is involved, you should consider each claim separately.

In deciding whether any fact has been proved by a preponderance of the evidence, you may consider the testimony of all of the witnesses, regardless of who may have called them, and all of the exhibits received in evidence, regardless of who may have produced them.

If the proof fails to establish any essential part of the Plaintiff’s claims by a preponderance of the evidence, you should find for the Defendant as to that claim.

Eleventh Circuit Pattern Jury Instruction 3.7.1 (Civil) (2022)

DEFENDANTS' REQUEST TO CHARGE NO. 7

**Civil Rights
42 USC § 1983 Claims / Eighth Amendment Claim
Convicted Prisoner Alleging Deliberate
Indifference to Serious Medical Need**

In this case, Ashley Diamond claims that Dr. Sharon Lewis, while acting under color of law, was deliberately indifferent to her serious medical need and caused injury to her in violation of her Eighth Amendment rights.

The United States Constitution provides that anyone who is imprisoned is entitled to necessary medical care, and a corrections officer violates that right by being deliberately indifferent to a prisoner's known serious medical need.

To succeed on this claim, Ashley Diamond must prove each of the following facts by a preponderance of the evidence:

First: That Ashley Diamond had a serious medical need;

Second: That Dr. Lewis knew that Ashley Diamond had a serious medical need that posed a risk of serious harm;

Third: That Dr. Lewis failed to provide necessary medical care for Ashley Diamond's serious medical need in deliberate indifference to the risk of serious harm;

Fourth: That Dr. Lewis' conduct caused Ashley Diamond's injuries; and

Fifth: That Dr. Lewis acted under color of law.

The parties have agreed that Dr. Lewis acted under color of law, so you should accept that as a proven fact.

For the first element, Ashley Diamond must prove a serious medical need. A "serious medical need" is a medical condition that a physician has diagnosed as requiring treatment or a medical condition that is so obvious that even a lay person would easily recognize the need for

medical care. In either case, the medical condition must have posed a substantial risk of serious harm to Ashley Diamond if left unattended.

For the second element, you must determine whether Dr. Lewis actually knew Ashley Diamond had a serious medical need and required immediate attention. Put another way, it is not enough to show that Dr. Lewis was careless or neglected her job duties and should have known about Ashley Diamond's need. And it is not enough to show that a reasonable person would have known of the serious medical need. However, you may find from circumstantial evidence that Dr. Lewis knew about the risk of serious harm. Further, if the risk of serious harm was obvious, you may, based on that, find that Dr. Lewis knew about that risk.

For the third element, to decide whether Dr. Lewis was deliberately indifferent to Ashley Diamond's serious medical need, you may consider all the relevant circumstances including the seriousness of the injury, the length of any delay in providing Ashley Diamond medical care, and the reasons for any delay. But the law does not require that Ashley Diamond receive the most advanced medical response to his serious medical need.

For the fourth element, you must determine whether Dr. Lewis' conduct caused Ashley Diamond's injuries. Dr. Lewis' conduct caused Ashley Diamond's injuries if Ashley Diamond would not have been injured without Dr. Lewis' conduct or if Ashley Diamond's injuries were worsened by Dr. Lewis' conduct, and the injuries were a reasonably foreseeable consequence of Dr. Lewis' conduct.

Eleventh Circuit Pattern Jury Instruction 5.8 (Civil) (2022)

DEFENDANTS' REQUEST TO CHARGE NO. 8

**Civil Rights
42 USC § 1983 Claims / Eighth Amendment Claim
Convicted Prisoner Alleging Deliberately
Indifferent Failure to Protect**

In this case, Ashley Diamond also claims that each of the remaining five Defendants, Ahmed Holt, Robert Toole, Brooks Benton, Grace Atchison, and Lachesha Smith, while acting under color of law, unlawfully failed to protect Ashley Diamond from harm in violation of the United States Constitution.

An officer who fails to protect a prisoner from a known threat of harm posed by another prisoner may be held liable for this failure to protect.

To succeed on this claim against any Defendant, Ashley Diamond must prove each of the following by a preponderance of the evidence as to that particular Defendant:

First: That there was a substantial risk to Ashley Diamond that she could be harmed by another prisoner;

Second: That the particular Defendant actually knew of that risk;

Third: That the particular Defendant disregarded that risk or failed to take reasonable measures to protect Ashley Diamond in response to that risk;

Fourth: That Ashley Diamond was attacked by another prisoner;

Fifth: That the particular Defendant's failure to protect caused Ashley Diamond's injuries, and the injuries were a reasonably foreseeable consequence of that particular Defendant's failure to protect; and

Sixth: That the Defendant acted under color of law. The parties have agreed that these Defendants acted under color of law, so you should accept that as a proven fact.

For the second element, it is not necessary that the particular Defendant knew precisely who would attack Ashley Diamond if that particular Defendant knew there was a substantial risk to Ashley Diamond's safety. Also, if Ashley Diamond shows that the particular Defendant had information that he or she suspected (or believed) to be true, and if you find that such information indicated a substantial risk of serious harm to Ashley Diamond, that Defendant cannot escape liability for failing to confirm those facts. But it is not enough for Ashley Diamond to show that her risk of substantial harm was obvious and that the particular Defendant should have known of the risk. Ashley Diamond must show that the particular Defendant actually knew of the risk.

For the fifth element, Ashley Diamond has proved that a particular Defendant's conduct caused Ashley Diamond's injuries if Ashley Diamond would not have been injured without that particular Defendant's conduct, and the injuries were a reasonably foreseeable consequence of that particular Defendant's conduct.

If you find Ashley Diamond has proved each of the facts she must prove against the particular Defendant, you must then decide the issue of Ashley Diamond's damages against that particular Defendant. If you find that Ashley Diamond has not proved each of these facts against the particular Defendant, then you must find for that particular Defendant.

Eleventh Circuit Pattern Jury Instruction 5.9 (Civil) (2022)

DEFENDANTS' REQUEST TO CHARGE NO. 9

**Civil Rights
42 U.S.C. § 1983 Claims
Damages**

Ashley Diamond can recover compensatory damages only if you find that Ashley Diamond has suffered more than a minimal physical injury (or, for the alleged failure to protect claim, the commission of a sexual act as I will specifically define that term for you). Thus, you must first determine whether Ashley Diamond suffered more than a minimal physical injury. Minor cuts and bruises are examples of minimal physical injuries. If Ashley Diamond has failed to prove that she suffered more than a minimal physical injury, then you must award nominal damages of \$1.00. This is because a person whose constitutional rights were violated is entitled to a recognition of that violation, even if she suffered no actual injury.

For the alleged failure to protect claim, you must also determine whether there was a commission of a sexual act. The term “sexual act” means—

- (A) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight;
- (B) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
- (C) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person

If you find that Ashley Diamond has proved either more than a minimal physical injury, or for the alleged failure to protect claim that there was a commission of a sexual act, then you must consider Ashley Diamond’s claims for compensatory damages.

You should assess the monetary amount that a preponderance of the evidence justifies as full and reasonable compensation for all of Ashley Diamond’s damages—no more, no less. You

must not impose or increase these compensatory damages to punish or penalize a Defendant. And you must not base these compensatory damages on speculation or guesswork. But compensatory damages are not restricted to actual loss of money—they also cover the physical aspects of the injury. Ashley Diamond does not have to introduce evidence of a monetary value for intangible things like physical pain. You must determine what amount will fairly compensate her for those claims. There is no exact standard to apply, but the award should be fair in light of the evidence.

You should consider the following elements of damage, to the extent you find that Ashley Diamond has proved them by a preponderance of the evidence, and no others:

(a) The reasonable value of medical care and supplies that Ashley Diamond reasonably needed and actually obtained, and the present value of medical care and supplies that Ashley Diamond is reasonably certain to need in the future;

(b) Ashley Diamond's physical injuries, including ill health, physical pain and suffering, disability, disfigurement, and discomfort, including such physical harm that Ashley Diamond is reasonably certain to experience in the future;

(c) Wages, salary, profits, and the reasonable value of working time that Ashley Diamond lost because of her inability or diminished ability to work, and the present value of such compensation that Ashley Diamond is reasonably certain to lose in the future because of her inability or diminished ability to work;

(d) Ashley Diamond's mental and emotional distress, impairment of reputation, and personal humiliation, including such mental or emotional harm that Ashley Diamond is reasonably certain to experience in the future; and

(e) The reasonable value of Ashley Diamond's property that was lost or destroyed because of a Defendant's conduct.

You may award \$1.00 in nominal damages and no compensatory damages if you find that: (a) Ashley Diamond has submitted no credible evidence of injury; or (b) Ashley Diamond's injuries have no monetary value or are not quantifiable with any reasonable certainty.

Anyone who claims loss or damages as a result of an alleged wrongful act by another has a duty under the law to "mitigate" those damages—to take advantage of any reasonable opportunity that may have existed under the circumstances to reduce or minimize the loss or damage. So, if you find that Defendants have proved by a preponderance of the evidence that Ashley Diamond did not seek out or take advantage of a reasonable opportunity to reduce or minimize the loss or damage under all the circumstances, you should reduce the amount of Ashley Diamond's damages by the amount that she could have reasonably avoided if she had taken advantage of such an opportunity.

If you find for Ashley Diamond and find that a Defendant acted with malice or reckless indifference to Ashley Diamond's federally protected rights, the law allows you, in your discretion, to award Ashley Diamond punitive damages as a punishment for the Defendant and as a deterrent to others.

Ashley Diamond must prove by a preponderance of the evidence that she is entitled to punitive damages.

A Defendant acts with malice if his or her conduct is motivated by evil intent or motive. A Defendant acts with reckless indifference to the protected federal rights of Ashley Diamond when the Defendant engages in conduct with a callous disregard for whether the conduct violates Ashley Diamond's protected federal rights.

If you find that punitive damages should be assessed against a Defendant, you may consider the evidence regarding the Defendant's financial resources in fixing the amount of punitive damages to be awarded.

Eleventh Circuit Pattern Jury Instruction 5.13 (Civil) (2022)

42 U.S.C. § 1997e(e)

18 U.S.C. § 2246

Boxer X v. Harris, 437 F.3d 1107, 1111 n.3 (11th Cir. 2006)

Hoever v. Marks, 993 F.3d 1353 (11th Cir. 2021)

DEFENDANTS' REQUEST TO CHARGE NO. 10

No Mere Negligence

I charge you that since this action is brought for the redress of alleged constitutional violations, mere negligence alone on the part of the Defendants is insufficient to hold any of them liable in this action. Negligence is no more than the failure of a person to measure up to the conduct of a reasonable person. The Constitution, on the other hand, protects individuals from the arbitrary and abusive exercise of the powers of government, and not from mere negligence. There must be present an abuse of governmental power employed as an instrument of oppression if an injury of an individual at the hands of a state official is to be raised to the level of a constitutional violation.

Therefore, if you should find that any Defendant has in some way acted in a negligent manner, and that his conduct has not otherwise risen to the level of a constitutional deprivation as I have described the elements of the claims for you, you may not hold this individual liable in this case.

Davidson v. Cannon, 474 U.S. 344 (1986)

Daniels v. Williams, 474 U.S. 327 (1986)

Owens v. City of Atlanta, 780 F.2d 1564 (11th Cir. 1986)

DEFENDANTS' REQUEST TO CHARGE NO. 11

Policy

You have heard evidence in this case about certain Georgia Department of Corrections policies and the manner in which they were implemented or carried out.

Plaintiff's claims in this case are for alleged constitutional violations, and the elements of the claims, each of which she must prove, are as I have earlier described them to you. A policy violation, even if one occurs, is not a constitutional violation.

United States v. Caceres, 440 U.S. 741, 751-752, 99 S. Ct. 1465, 59 L. Ed. 2d 733 (1979)

Magluta v. Samples, 375 F.3d 1269, 1279 n. 7 (11th Cir. 2004)

Laney v. Farley, 501 F.3d 577, 581 n.2 (6th Cir. 2007)

Myers v. Klevenhagen, 97 F.3d 91, 94 (5th Cir. 1996)

West v. Gordy, 2017 U.S. Dist. LEXIS 17858, *34 (M.D. Ala. Feb. 7, 2017)

DEFENDANTS' REQUEST TO CHARGE NO. 12

**Damages
Computation**

I charge you that damages must be susceptible of reasonably certain and accurate computation. If you should find that Plaintiff is entitled to a verdict, the burden is upon the Plaintiff to prove to a reasonably certain degree and in a reasonably accurate manner the amount of damages proximately caused by any illegal action of a Defendant. If Plaintiff fails to provide such proof, she is not entitled to recovery.

Poultry Health Serv. of Georgia Inc., v. Moxley, 538 F. Supp. 276 (S.D. Ga. 1982)
Synthetic Industries, Inc., v. Whitlock, Inc., 439 F. Supp. 1297 (N.D. Ga. 1977)
Midland Valley Plaza v. Georgia Railroad Bank & Trust, 542 F.2d 945 (5th Cir. 1976)

DEFENDANTS' REQUEST TO CHARGE NO. 13

**No Punitive Damages
Without Compensatory Damages**

No punitive damages can be awarded unless you, the jury, have first unanimously awarded the Plaintiff compensatory damages. No punitive damages may be awarded unless a particular Defendant is found by you to have acted oppressively, wantonly, and in willful and gross disregard of the Plaintiff's rights. An award of punitive damages must be the unanimous decision of the jury. Punitive damages are not favored by the law and are to be awarded only with caution and within narrow limits. Even if you find that the standard which I have instructed you is met, the awarding of such damages is solely in your discretion. You are not in any circumstances required to award such damages.

Smith v. Wade, 461 U.S. 30 (1983)

Lee v. Southern Home Sites Corp., 419 F.2d 290, 294 (5th Cir. 1970)

DEFENDANTS' REQUEST TO CHARGE NO. 14

Proximate Cause

You are not to award damages for any injury or condition from which the Plaintiff may have suffered, or may not be suffering, unless it has been established by a preponderance of the evidence in the case that such an injury or condition was proximately caused by the particular Defendant.

Proximate cause is an important legal term that I will define for you. By proximate cause, I mean that which by a natural and continuous sequence unbroken by new cause produces an event and without which the event would not have occurred. To constitute proximate cause, the injury must have been the foreseeable result of some act or omission of the particular Defendant. The act or omission to which I refer must actively aid in producing the injury as a direct and existing cause.

The focus of any award of damages under § 1983 is to compensate for the actual injuries caused by the particular constitutional deprivation. Damages must not be based on speculation. In other words, the damages are limited to those which are attributable to the improper conduct of the particular Defendant.

Devitt v. Blackmar's Federal Jury Practice and Instructions, Fourth Ed., §85.15
Smith v. City of Oak Hill, 587 Fed. Appx. 524, 527 (11th Cir. 2014) (discussing requirement of showing both cause in fact and legal or proximate cause in section 1983 action)
Jackson v. Sauls, 206 F.3d 1156, 1168 n. 16 (11th Cir. 2000) (discussing requirement of showing both cause in fact and legal or proximate cause in section 1983 action)
Wright v. Sheppard, 919 F.2d 665, 669 (11th Cir. 1990) (stating “the focus of any award of damages under § 1983 is to compensate for the actual injuries caused by the particular constitutional deprivation”)
Carey v. Phipus, 435 U.S. 247 (1978) (holding that nominal damages are the appropriate means of vindicating rights whose deprivation has not caused actual, provable injury)
Memphis Community School Dist. v. Stachura, 477 U.S. 299, 309-10 (1986)
Aretz v. United States, 604 F.2d 417, 431 (5th Cir. 1979)
Cain v. Vontz, 703 F.2d 1279, 1282 (11th Cir. 1983)

DEFENDANTS' REQUEST TO CHARGE NO. 15

Prisons Not Comfortable

The Constitution does not mandate comfortable prisons. To the extent that prison conditions are restrictive and even harsh, they are part of the penalty that criminal offenders pay for their offenses against society. So unless the Plaintiff meets his burden of proving, by a preponderance of the evidence, each of the elements of her claims as I have described them to you she cannot recover.

Rhodes v. Chapman, 452 U.S. 337, 347, 349 (1981) (“the Constitution does not mandate comfortable prisons, and prisons . . . which house persons convicted of serious crimes, cannot be free of discomfort.”)

Bell v. Wolfish, 441 U.S. 520, 537 (1979) (“Whether it be called a jail, a prison, or a custodial center, the purpose of the facility is to detain. Loss of freedom of choice and privacy are inherent incidents of confinement in such a facility. And the fact that such detention interferes with the detainee’s understandable desire to live as comfortably as possible and with as little restraint as possible during confinement does not convert the conditions or restrictions of detention into ‘punishment.’”)

DEFENDANTS' REQUEST TO CHARGE NO. 16

State Not a Defendant

Evidence has been introduced to the effect that the Defendants were correctional officers or officials employed by the Georgia Department of Corrections. The Defendants in this case are being sued in their individual capacity. The State of Georgia and the Georgia Department of Corrections are not defendants in this case.

Alabama v. Pugh, 438 U.S. 781 (1978)

DEFENDANTS' REQUEST TO CHARGE NO. 17

Spoliation of Evidence

The parties each have introduced evidence that the other allowed the destruction or loss of relevant evidence, or failed to preserve relevant evidence for use in this case.

Each party making this contention has the burden of proving it. The party must prove that the missing evidence existed at one time; that the other party had a duty to preserve the evidence; and that the evidence was crucial to his or her case. In addition, the party must also prove that the loss or destruction of the evidence was intentional or in bad faith. Bad faith in this context means loss or destruction for the purpose of hiding adverse evidence.

If all of this is proved, then you may conclude from the absence of the evidence that the evidence was harmful to the party that caused its loss or destruction.

Tesoriero v. Carnival Corp., 965 F.3d 1170, 1184 (11th Cir. 2020)

Stanfill v. Talton, 851 F.Supp.2d 1346, 1361-1362 (M.D. Ga. 2012) (Treadwell, J.)

Allen v. Sanchez, 2019 U.S. Dist. LEXIS 115198, *9 (M.D. Ga. July 11, 2019) (Treadwell, J.)

In re Delta/AirTran Baggage Fee Antitrust Litig., 770 F. Supp. 2d 1299, 1305 (N.D. Ga. 2011)

DEFENDANTS' REQUEST TO CHARGE NO. 18

**Duty to Deliberate
When Only the Plaintiff Claims Damages**

Of course, the fact that I have given you instructions concerning the issue of Plaintiff's damages should not be interpreted in any way as an indication that I believe that the Plaintiff should, or should not, prevail in this case.

Your verdict must be unanimous – in other words, you must all agree. Your deliberations are secret, and you will never have to explain your verdict to anyone.

Each of you must decide the case for yourself, but only after fully considering the evidence with the other jurors. So you must discuss the case with one another and try to reach an agreement. While you're discussing the case, don't hesitate to reexamine your own opinion and change your mind if you become convinced that you were wrong. But don't give up your honest beliefs just because others think differently or because you simply want to get the case over with.

Remember, that in a very real way, you're judges - judges of the facts. Your only interest is to seek the truth from the evidence in the case.

Eleventh Circuit Pattern Jury Instruction 3.8.1 (Civil) (2022)

DEFENDANTS' REQUEST TO CHARGE NO. 19

**Election of Foreperson
Explanation of Verdict Form**

When you go to the jury room, choose one of your members to act as foreperson. The foreperson will direct your deliberations and speak for you in Court.

A verdict form has been prepared for your convenience.

[Explain verdict]

Take the verdict form with you to the jury room. When you have all agreed on the verdict, your foreperson must fill in the form, sign it and date it. Then you will return it to the courtroom.

If you wish to communicate with me at any time, please write down your message or question and give it to the court security officer. The court security officer will bring it to me and I will respond as promptly as possible – either in writing or by talking to you in the courtroom. Please understand that I may have to talk to the lawyers and the parties before I respond to your question or message, so you should be patient as you await my response. But I caution you not to tell me how many jurors have voted one way or the other at that time. That type of information should remain in the jury room and not be shared with anyone, including me, in your note or question.

Eleventh Circuit Pattern Jury Instruction 3.9 (Civil) (2013)

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 14th day of January, 2023.

s/ Roger A. Chalmers
Roger A. Chalmers