

have called them, and all exhibits received in evidence, regardless of who may have produced them.

This case is divided into two parts, and in this part of the trial, the amount of damages is not an issue that you will decide. As such, the Plaintiff need not prove the extent of the injuries or damages at this time, although Plaintiff is required in this phase to prove the existence of damages in order to meet his burden of proof.

III. Issues in the Case

The Utopia Civil Code allows an individual to seek damages from any person who, under color of law, deprives that individual of any rights protected by the constitution or laws of the United States. Plaintiff claims that Gabriel Torres was injured when the Defendants' employee, Max Carter, applied excessive force on Gabriel Torres, thereby violating Gabriel Torres's rights to life and liberty without due process of law in violation of the Fourteenth Amendment to the U.S. Constitution.

The issues for you to decide, in accordance with the law as I give it to you, are:

1. Whether Max Carter was acting under color of law when Carter applied force against Gabriel Torres on October 13, 2015.
2. Whether Carter's actions caused any injury to Gabriel Torres, and, if so, whether Carter applied excessive force against Gabriel Torres, thereby depriving him of his right to due process.
3. Whether any injury to Gabriel Torres was caused by a policy, practice, or custom of the Eldorado Police Department to inadequately supervise and discipline law enforcement officers who use excessive force.

A. Color of Law

In deciding whether Max Carter was acting under color of law, I instruct you as follows:

State or local officials act under color of law when they act within the limit of their lawful authority. Officials also act under color of law when they act beyond the bounds of their lawful authority while the officials are purporting or pretending to act in the performance of their official duties.

Officials may also act under color of law when they are acting as agents of the State. An employer such as the Arcadia Police Department is liable for the acts or omissions of its employees, including police officers, if those acts or omissions occur within the scope of their employment and cause injury to another person.

In making your decision about whether Max Carter was acting under the color of law when Officer Carter is alleged to have sprayed Gabriel Torres, you may consider the facts and circumstances surrounding Carter's presence and conduct at the scene.

B. Excessive Force

In deciding whether Carter's actions caused injury to Torres and whether Carter applied excessive force, I instruct you as follows.

Where the claim is brought against a police department for the acts of one of its officers, a Plaintiff must prove that the actions of the police officer were the actual and proximate cause of Plaintiff's injury. A cause is an actual cause where the injury would not have occurred but for the Defendant's actions. A cause is a proximate cause when the injury is a reasonably foreseeable consequence of the Defendant's actions.

Plaintiff must also prove that Carter used excessive force against Torres. To do so, Plaintiff must prove each of the following elements: (i) Torres sustained physical and emotional harm that (ii) resulted from the use of force that was excessive and (iii) the excessiveness of which was objectively unreasonable in light of the facts and circumstances at the time.

Even if an individual is permitted to use force, it is not legally permissible to use unreasonable force. Reasonableness is an objective standard. The question you must consider is whether Max Carter's actions were objectively reasonable at the time and in light of the facts and circumstances confronting the officer, without regard to underlying intent or motivation. If the force Carter used was unreasonable, it would not matter that Carter had good intentions. Likewise, if the force Carter used was reasonable, it would not matter that Carter had bad or improper motives.

You must judge Carter's actions from the perspective of a reasonable officer on the scene at the time, rather than with the 20/20 vision of hindsight. In using this standard, you must consider that police officers are often forced to make split-second judgments about the amount of force necessary in a particular situation, including in circumstances that are tense, uncertain, and rapidly evolving.

Some of the factors to consider in determining whether Carter used excessive force include:

- The likelihood of an immediate threat to the safety of police officers or others
- The severity of such threat
- The severity of the force applied, relative to the risk of harm from not applying it
- The amount of time that Carter had to consider whether force needed to be applied
- Whether Plaintiff was actively resisting the instructions of Carter
- The extent of the injury suffered by Torres