

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

Plaintiffs,

No.

v.

PROPOSED JOINT JURY INSTRUCTIONS

Defendants.

The parties respectfully submit the following proposed Joint Jury Instructions for the Court's review. The parties also submit proposed jury instructions which the parties have not agreed on along with a brief analysis of why the proposed jury instruction should be given.

Respectfully submitted this 10<sup>th</sup> day of May, 2011.

\_\_\_\_\_  
Of Attorneys for Plaintiff

\_\_\_\_\_  
Of Attorneys for Defendants

**JOINT INSTRUCTIONS**

<b>NO.</b>	<b>TITLE</b>	<b>AGREED</b>	<b>PLTF'S PROPOSED INSTRUCTION</b>	<b>DEF'S PROPOSED INSTRUCTION</b>
1	Introduction	X		
2	Duty of Jury	X		
3	Burden of Proof – Preponderance of the Evidence	X		
4	Two or More Parties – Different Legal Rights	X		
5	What is Evidence	X		
6	What is Not Evidence		X	X
7	Direct and Circumstantial Evidence	X		
8	Credibility of Witness	X		
9	Impeachment Evidence - Witness		X	X
10	Expert Opinion	X		
11	42 U.S.C. § 1983	X		
12	Section 1983 Claim Against Defendants Freeman and Hanada in Individual Capacity – Elements and Burden of Proof	X – instruction agreed to by the parties; need to add applicable jury instruction numbers		
13	Unreasonable Seizure of Person – Generally		X	
14	Unlawful Arrest		X	X
15	Excessive (Deadly and Nondeadly Force)		X	X
	Use of Force During Arrest 42 U.S.C. § 1983			X

<b>NO.</b>	<b>TITLE</b>	<b>AGREED</b>	<b>PLTF'S PROPOSED INSTRUCTION</b>	<b>DEF'S PROPOSED INSTRUCTION</b>
17	Hindsight			X
18	Resisting Arrest			X
19	Oregon Law – Assaulting a Public Safety Officer			X
20	Oregon Law – Harassment			X
21	Oregon Law – Battery	X		
22	Oregon Law – False Arrest	X		
23	Damages – Proof	X		
24	Compensatory Damages	X		
25	Nominal Damages	X		
26	Duty to Deliberate	X		
27	Communication with Court	X		
28	Return of Verdict	X		

## **JOINT REQUESTED JURY INSTRUCTION NO. 2**

### **Duty of Jury**

Ladies and gentlemen: You are now the jury in this case. It is my duty to instruct you on the law.

You must not infer from these instructions or from anything I may say or do as indicating that I have an opinion regarding the evidence or what your verdict should be.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath to do so.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all important.

## **PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 14**

### **Unreasonable Seizure of Person - Unlawful Arrest**

In general, a seizure of a person by arrest without a warrant is reasonable if the arresting officers had probable cause to believe the plaintiff has committed or was committing a crime.

In order to prove the seizure in this case was unreasonable, the plaintiff must prove by a preponderance of the evidence that she was arrested without probable cause.

“Probable cause” exists when, under all of the circumstances known to the officers at the time, an objectively reasonable police officer would conclude there is a fair probability that the plaintiff has committed or was committing a crime.

Under state law, it is a crime to assault a public safety officer. A person commits the crime of assaulting a public safety officer if the person intentionally or knowingly causes physical injury to the other person, knowing the other person to be a peace officer, corrections officer, youth correction officer, parole and probation officer, animal control officer, firefighter or staff member, and while the other person is acting in the course of official duty. “Physical injury” means impairment of physical condition or substantial pain and excludes pain that is fleeting or inconsequential.

Under state law, a person commits the crime of resisting arrest if the person intentionally resists a person known to be a police officer in making an arrest. A person cannot use physical force to resist an arrest by a police officer, even if the arrest is unlawful. If, however, Plaintiff reasonably believed that the officers arresting her were using more physical force than was necessary to make the arrest, then Plaintiff was entitled to use physical force in self-defense. In defending, Plaintiff was entitled to use only that degree of physical force that she reasonably believed to be necessary to defend herself against what she believed to be the excessive force.

I instruct you that the Defendants did not have probable cause to arrest Plaintiff for the cited crimes of theft II, furnishing alcohol to a minor, and harassment.

**Plaintiff's Instructions includes the 9<sup>th</sup> Cir. Model Instruction for a probable cause arrest and, as the model instructions provide, includes the elements of the crimes for which probable cause must have existed for the arrest. This instruction also limits the jury from considering whether probable cause existed for the other cited crimes as the court has already determined that Defendants lacked probable cause for those three crimes.**

---

Ninth Cir. Model Jury Instruction 9.20 (2007)(modified); ORS 163.208; ORS 161.015(7); *State v. Poole*, 175 Or.App. 258, 28 P.3d 643, 645 App., 2001); Uniform Criminal Jury Instruction No. 1225 (modified); Uniform Criminal Jury Instruction No. 1227 (modified); ORS 161.260

## DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 14

### Unreasonable Seizure of Person – Unlawful Arrest

In her first claim, plaintiff has the burden to prove that the acts of defendants Officer Chris Freeman and Michael Hanada deprived the plaintiff of rights under the United States Constitution. In this claim, plaintiff alleges the defendants deprived her of her rights under the Fourth Amendment to the Constitution by arresting her without probable cause to believe that she had committed a crime.

In general, a seizure of a person by arrest without a warrant is reasonable if the arresting officer had probable cause to believe the plaintiff has committed or was committing a crime.

In order to prove the seizure in this case was reasonable, the plaintiff must prove by a preponderance of the evidence that she was arrested without probable cause.

Probable cause to arrest exists if the facts and circumstances within the knowledge of the arresting officer, in light of his training and experience, would leave such officer to believe that the suspect has probably committed a crime. Probable cause does not require that the arresting officer has evidence sufficient to prove a suspect's guilt beyond a reasonable doubt; rather, the officer must have a reasonable belief in the suspect's guilt.

I instruct you that if you find that plaintiff slapped Officer Freeman's hand, then there was probable cause to arrest plaintiff for assaulting a public safety officer.

---

Ninth Circuit Model Civil Jury Instruction No. 9.20 (2007) (modified); *Beauregard v. Wingard*, 362 F.2d 901, 904 (9th Cir. 1966); *U.S. v. Sears*, 663 F.2d 896, 903-904 (9th Cir. 1981)