

**THE SUPERIOR COURT OF THE COUNTIES OF WASHINGTON
FOR KING COUNTY**

RYAN SANTHUFF,

Plaintiff,

vs.

THE STATE OF WASHINGTON AND
DAVID JAMES NOBACH,

Defendants.

Case No.: 19-2-04610-4 KNT

COURT'S INSTRUCTIONS

DATED September 24, 2020

A handwritten signature in black ink, appearing to read 'Mafé Rajul', is written over a horizontal line.

Hon. Mafé Rajul
King County Superior Court
Department 35

INSTRUCTION NO. 1

It is your duty to decide the facts in this case based upon the evidence presented to you during this trial. It also is your duty to accept the law as I explain it to you, regardless of what you personally believe the law is or what you personally think it should be. You must apply the law from my instructions to the facts that you decide have been proved, and in this way decide the case.

The evidence that you are to consider during your deliberations consists of the testimony that you have heard from witnesses and the exhibits that I have admitted during the trial. If evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict.

Exhibits may have been marked by the court clerk and given a number, but they do not go with you to the jury room during your deliberations unless they have been admitted into evidence. The exhibits that have been admitted will be available to you in the jury room.

In order to decide whether any party's claim has been proved, you must consider all of the evidence that I have admitted that relates to that claim. Each party is entitled to the benefit of all of the evidence, whether or not that party introduced it.

You are the sole judges of the credibility of each witness, and of the value or weight to be given to the testimony of each witness. In assessing credibility, you must avoid bias, conscious or unconscious, including bias based on religion, ethnicity, race, sexual orientation, gender or disability.

In considering a witness's testimony, you may consider these things: the opportunity of the witness to observe or know the things they testify about; the ability of the witness to observe

accurately; the quality of a witness's memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness's statements in the context of all of the other evidence; and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

One of my duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for my rulings on the evidence. If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict.

The law does not permit me to comment on the evidence in any way. I would be commenting on the evidence if I indicated my personal opinion about the value of testimony or other evidence. Although I have not intentionally done so, if it appears to you that I have indicated my personal opinion, either during trial or in giving these instructions, you must disregard it entirely.

The comments of the lawyers during this trial are intended to help you understand the evidence and apply the law. However, it is important for you to remember that the lawyers' remarks, statements, and arguments are not evidence. You should disregard any remark, statement, or argument that is not supported by the evidence or the law as I have explained it to you.

You may have heard objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have a duty to do so. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer's objections.

As jurors, you have a duty to consult with one another and to deliberate with the intention of reaching a verdict. Each of you must decide the case for yourself, but only after an impartial consideration of all of the evidence with your fellow jurors. Listen to one another carefully. In the course of your deliberations, you should not hesitate to re-examine your own views and to change your opinion based upon the evidence. You should not surrender your honest convictions about the value or significance of evidence solely because of the opinions of your fellow jurors. Nor should you change your mind just for the purpose of obtaining enough votes for a verdict.

As jurors, you are officers of this court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, prejudice, or personal preference. To assure that all parties receive a fair trial, you must act impartially with an earnest desire to reach a proper verdict.

Finally, the order of these instructions has no significance as to their relative importance. They are all equally important. In closing arguments, the lawyers may properly discuss specific instructions, but you must not attach any special significance to a particular instruction that they may discuss. During your deliberations, you must consider the instructions as a whole.

INSTRUCTION NO. 2

The State of Washington is a Defendant. The Washington State Patrol is an Agency within the State. The State can act only through their officers and employees. Any act or omission of an officer or employee is the act or omission of the State.

The law treats all parties equally whether they are government entities or individuals. This means that government entities and individuals are to be treated in the same fair and unprejudiced manner.

INSTRUCTION NO. 3

The evidence that has been presented to you may be either direct or circumstantial. The term "direct evidence" refers to evidence that is given by a witness who has directly perceived something at issue in this case. The term "circumstantial evidence" refers to evidence from which, based on your common sense and experience, you may reasonably infer something that is at issue in this case.

The law does not distinguish between direct and circumstantial evidence in terms of their weight or value in finding the facts in this case. One is not necessarily more or less valuable than the other.

INSTRUCTION NO. 4

When it is said that a party has the burden of proof on any proposition, or that any proposition must be proved by a preponderance of the evidence, or the expression "if you find" is used, it means that you must be persuaded, considering all the evidence in the case, that the proposition on which that party has the burden of proof is more probably true than not true.

INSTRUCTION NO. 5

Under the Washington Law Against Discrimination (WLAD) it is unlawful for an employer to retaliate against a person for opposing what the person reasonably believed to be discrimination on the basis of sex or gender, or providing information to or participating in a proceeding to determine whether discrimination or retaliation occurred.

To establish a claim of unlawful retaliation under the WLAD by The State of Washington, Detective Santhuff has the burden of proving each of the following propositions:

(1) That Detective Santhuff was opposing what he reasonably believed to be discrimination on the basis of sex or gender or retaliation or he was providing information or participated in a proceeding to determine whether discrimination or retaliation had occurred; and

(2) That a substantial factor in an adverse employment action, was Detective Santhuff's opposition to what he reasonably believed to be discrimination, which includes sexual harassment, or retaliation.

If you find from your consideration of all of the evidence that each of these propositions has been proved, then your verdict should be for Detective Santhuff on his retaliation claims. On the other hand, if any one of these propositions has not been proved, your verdict should be for The State of Washington this claim.

Detective Santhuff does not have to prove that opposition was the only factor or the main factor in the State's decision, nor does Detective Santhuff have to prove that he would not have received an adverse employment action but for his opposition or participation.

INSTRUCTION NO. 6

The term “adverse” means unfavorable or disadvantageous. Under the WLAD, an employment action is adverse if it is harmful to the point that it would dissuade a reasonable employee from making a complaint of discrimination, harassment, or retaliation. Whether a particular action is adverse is judged from the perspective of a reasonable person in Detective Santhuff’s position.

INSTRUCTION NO. 7

“Substantial factor” means a significant motivating factor in bringing about the employer's decision. “Substantial factor” does not mean the only factor or the main factor in the challenged act or decision.

INSTRUCTION NO. 8

Under Washington Law Against Discrimination (WLAD), information may be received by the State by any officer, manager, supervisor, or agent who has, or appears to have, authority to take the information, to relay the information, or to act upon the information in any way. If an officer, manager, supervisor or agent has knowledge of certain facts or events within the scope of his or her authority. The State is presumed to know of the same facts or events.

INSTRUCTION NO. 9

The same acts or omissions of the State of Washington can support multiple claims by
Detective Santhuff.

INSTRUCTION NO. 10

Under the Washington State Whistleblower Law, "whistleblower" means:

(i) An employee who in good faith reports alleged improper governmental action to the auditor or other public official; or

(ii) An employee who is perceived by the employer as reporting, whether they did or not, alleged improper governmental action to the auditor or other public official; *OR*

(iii) An employee who in good faith provides information to the auditor or other public official, and an employee who is believed to have reported asserted improper governmental action to the auditor or other public official, or to have provided information to the auditor or other public official, but who, in fact, has not reported such action or provided such information;

INSTRUCTION NO. 11

Under the Washington State Whistleblower Law, "Improper governmental action" means any action by an employee undertaken in the performance of the employee's official duties:

- (i) Which is a gross waste of public funds or resources;
- (ii) Which is in violation of federal or state law or rule, if the violation is not merely technical or of a minimum nature;
- (iii) Which is of substantial and specific danger to the public health or safety; or
- (iv) Which is gross mismanagement;

"Gross mismanagement" means the exercise of management responsibilities in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.

"Gross waste of funds" means to spend or use funds or to allow funds to be used without valuable result in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.

"Substantial and specific danger" means a risk of serious injury, illness, peril, or loss, to which the exposure of the public is a gross deviation from the standard of care or competence which a reasonable person would observe in the same situation.

INSTRUCTION NO. 12

Under the Washington State Whistleblower Law, a "Public official" is the Attorney General's designee or designees; the Chief of the agency where the employee works; the individuals designated to receive whistleblower reports; or the executive ethics board.

INSTRUCTION NO. 13

Under the Washington State Whistleblower Law, "Good faith" means the individual providing the information or report of improper governmental activity has a reasonable basis in fact for reporting or providing the information. An individual who knowingly provides or reports, or who reasonably ought to know he or she is providing or reporting, malicious, false, or frivolous information, or information that is provided with reckless disregard for the truth, or who knowingly omits relevant information is not acting in good faith.

INSTRUCTION NO. 14

Under the Washington State Whistleblower Law, "reprisal or retaliatory action" means, but is not limited to, any of the following:

- (i) Denial of adequate staff to perform duties;
- (ii) Frequent staff changes;
- (iii) Frequent and undesirable office changes;
- (iv) Refusal to assign meaningful work;
- (v) Unwarranted and unsubstantiated corrective action, disciplinary action, or unsatisfactory performance evaluations;
- (vi) Demotion;
- (vii) Reduction in pay;
- (viii) Denial of promotion;
- (ix) Suspension;
- (x) Dismissal;
- (xi) Denial of employment;
- (xii) A supervisor or superior behaving in a hostile manner toward the whistleblower, or encouraging coworkers to behave in a hostile manner toward the whistleblower;
- (xiii) A change in the physical location of the employee's workplace or a change in the basic nature of the employee's job, if either are in opposition to the employee's expressed wish;
- (xiv) Any other action that is inconsistent compared to actions taken before the employee engaged in conduct protected by this chapter, or compared to other employees who have not engaged in conduct protected by this chapter.

INSTRUCTION NO. 15

To establish a claim under the whistleblower statute, Detective Santhuff has the burden of proving by a preponderance of the evidence the following propositions:

- (1) That he is a whistleblower;
- (2) That he was subject to workplace reprisal or retaliatory actions.

It is presumed that the retaliatory actions, if proven, were related to the whistleblower activities.

The Washington State Patrol and Lieutenant Nobach can rebut that presumption by proving by a preponderance of the evidence that:

- (a) The State's action or actions were justified by reasons unrelated to Detective Santhuff's status as a whistleblower; and
- (b) That improper motive was not a substantial factor.

If you find from your consideration of all evidence that Detective Santhuff has proved each proposition 1 through 2 above, then your verdict should be for Detective Santhuff on this claim, unless the State and Lt. Nobach have proved that their actions were justified and improper motive was not a factor - (a) and (b) above – in which case your verdict should be for the defendants on this claim.

INSTRUCTION NO. 16

As an employer, the State of Washington can exercise business judgment and make business decisions that you may believe are ill-advised, unwise, mistaken or unfair. You may not second-guess the State's or Lieutenant Nobach's business decisions except to the extent you find they reflect discriminatory or retaliatory conduct or motive.

INSTRUCTION NO. 17

An agency is prohibited from destroying a public record, even if it is about to be lawfully destroyed under a retention schedule, if a public records request has been made for that record. The agency is required to retain the record until the record request has been resolved.

INSTRUCTION NO. 18

A witness who has special training, education, or experience may be allowed to express an opinion in addition to giving testimony as to facts.

You are not, however, required to accept his or her opinion. To determine the credibility and weight to be given to this type of evidence, you may consider, among other things, the education, training, experience, knowledge, and ability of the witness. You may also consider the reasons given for the opinion and the sources of his or his information, as well as considering the factors already given to you for evaluating the testimony of any other witness.

INSTRUCTION NO. 19

It is the duty of the court to instruct you as to the measure of damages. By instructing you on damages, the court does not mean to suggest for which party your verdict should be rendered.

If your verdict is for Detective Santhuff, you must determine the amount of money that will reasonably and fairly compensate Detective Santhuff for such damages as you find were proximately caused by the acts of the defendant, the State of Washington.

If you find for the Detective Santhuff, you should consider the following elements:

- (1) The reasonable value of lost future earnings and fringe benefits; and
- (2) The emotional harm to Detective Santhuff caused by the defendant's wrongful conduct, including emotional distress, loss of enjoyment of life, humiliation, personal indignity, embarrassment, fear, anxiety, and/or anguish experienced and with reasonable probability to be experienced by Detective Santhuff in the future.

The burden of proving damages rests with the party claiming them, and it is for you to determine, based upon the evidence, whether any particular element has been proved by a preponderance of the evidence.

Any award of damages must be based upon evidence and not upon speculation, guess, or conjecture. The law has not furnished us with any fixed standards by which to measure emotional distress, loss of enjoyment of life, humiliation, pain and suffering, personal indignity, embarrassment, fear, anxiety, and/or anguish. With reference to these matters, you must be governed by your own judgment, by the evidence in the case, and by these instructions.

INSTRUCTION NO. 20

The term "proximate cause" means a cause that was a substantial factor in bringing about Detective Santhuff's injuries and damages.

INSTRUCTION NO. 21

In calculating damages for future wage loss you should determine the present cash value of salary, pension, and other fringe benefits from today until the time Detective Santhuff may reasonably be expected to retire to fully recover from the continuing effects of the discrimination and/or retaliation, decreased by any projected future earnings from another employer.

Noneconomic damages such as emotional distress, loss of enjoyment of life, humiliation, personal indignity, embarrassment, fear, anxiety, and/or anguish are not reduced to present cash value.

“Present cash value” means the sum of money needed now which, if invested at a reasonable rate of return, would equal the amount of loss at the time in the future when the earnings and/or benefits would have been received.

The rate of interest to be applied in determining present cash value should be that rate which in your judgment is reasonable under all the circumstances. In this regard, you should take into consideration the prevailing rates of interest in the area that can reasonably be expected from safe investments that a person of ordinary prudence, but without particular financial experience or skill, can make in this locality.

In determining present cash value, you may also consider decreases in value of money that may be caused by future inflation.

INSTRUCTION NO. 22

Mathematical certainty is not required in calculating plaintiff's economic damages. Any ambiguity in what Detective Santhuff would have received but for retaliation should be resolved against the retaliating defendant or defendants.

INSTRUCTION NO. 23

When you begin to deliberate, your first duty is to select a presiding juror. The presiding juror's responsibility is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you. Deliberations are to occur only in the jury room when all twelve jurors are present.

You are all officers of the court and must evaluate the evidence with an open mind free of bias or prejudice. If during your deliberations, you become concerned that the discussions are being influenced by preconceived bias or prejudice, you must bring this to the attention of the other jurors so that the issue may be fairly discussed among all members of the jury.

You will be given the exhibits admitted in evidence, these instructions, and verdict form[s] for recording your verdict. Exhibits may have been marked by the court clerk and given a number, but they do not go with you to the jury room during your deliberations unless they have been admitted into evidence. The exhibits that have been admitted will be available to you in the jury room.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. In your question, do not state how the jury has voted, or in any other way indicate how your deliberations are proceeding. The presiding juror should sign and date the question and give it to the bailiff. I will confer with the lawyers to determine what response, if any, can be given.

In order to reach a verdict ten of you must agree. When ten of you have agreed, then the presiding juror will fill in the verdict form. The presiding juror must sign the verdict whether or not the presiding juror agrees with it. The presiding juror will then inform the bailiff that you have reached a verdict. The bailiff will conduct you back into this courtroom where the verdict will be announced.