

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division

*As read, with
any important
changes noted*

Case No. 03-20161-CIV-KING/GARBER

MARIE JEANNE JEAN, in her individual
capacity, and as parent and legal
guardian for minors VLADIMY PIERRE
and MICHELDA PIERRE, and LEXIUSTE
CAJUSTE,

Plaintiffs,

v.

CARL DORÉLIEN,

Defendant.

COURT'S INSTRUCTIONS
TO THE JURY

Members of the Jury:

I will now explain to you the rules of law that you must follow and apply in deciding this case.

When I have finished you will go to the jury room and begin your discussions - - what we call your deliberations.

In deciding the case you must follow and apply all of the law as I explain it to you, whether you agree with that law or not; and you must not let your decision be influenced in any way by sympathy, or by prejudice, for or against anyone.

In your deliberations you should consider only the evidence - - that is, the testimony of the witnesses and the exhibits I have admitted in the record - - but as you consider the evidence, both direct and circumstantial, you may make deductions and reach conclusions which reason and common sense lead you to make. "Direct evidence" is the testimony of one who asserts actual knowledge of a fact, such as an eye witness. "Circumstantial evidence" is proof of a chain of facts and circumstances tending to prove, or disprove, any fact in dispute. The law makes no distinction between the weight you may give to either direct or circumstantial evidence.

Remember that anything the lawyers say is not evidence in the case. And, except for my instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your decision concerning the facts. It is your own recollection and interpretation of the evidence that controls.

Now, in saying that you must consider all of 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. Also, the number of witnesses testifying concerning any particular dispute is not controlling.

In deciding whether you believe or do not 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 observe accurately 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?

You should also ask yourself whether there was evidence tending to prove that the witness testified falsely concerning some important fact; or, whether there was evidence that at some other time the witness said or did something, or failed to say or do something, which was different from the testimony the witness gave before you during the trial.

You should keep in mind, of course, that a simple mistake by a witness does not necessarily mean that the witness was not telling the truth as he or she remembers it, because people naturally tend to forget some things or remember other things inaccurately. So, if a witness has made a misstatement, you need to consider whether that misstatement was simply an innocent lapse of memory or an intentional falsehood; and the significance of that may depend on whether it has to do with an important fact or with only an unimportant detail.

When knowledge of a technical subject matter might be helpful to the jury, a person having special training or experience in that technical field is permitted to state an opinion concerning those technical matters.

Merely because such a witness has expressed an opinion, however, does not mean that you must accept that opinion. The same as with any other witness, it is up to you to decide whether to rely upon it.

In this case it is the responsibility of the Plaintiffs to prove every essential part of their 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 Plaintiffs' claim is more likely true than not true.

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 any of the Plaintiffs' claims by a preponderance of the evidence, you should find for Colonel Dorélien as to that claim.

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

Any verdict you reach in the jury room must be unanimous. In other words, to return a verdict you must all agree. Your deliberations will be secret; you will never have to explain your verdict to anyone.

It is your duty as jurors to discuss the case with one another in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after full consideration of the evidence with the other members of the jury. While you are discussing the case do not hesitate to re-examine your own opinion and change your mind if you become convinced that you were wrong. But do not give up your honest beliefs solely because the others think differently or merely to get the case over with.

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

7

Moved to
end of instructions

When you go to the jury room you should first select one of your members to act as your foreperson. The foreperson will preside over your deliberations and will speak for you here in court.

A form of verdict has been prepared for your convenience.

[Explain verdict]

You will take the verdict form to the jury room and when you have reached unanimous agreement you will have your foreperson fill in the verdict form, date and sign it, and then return to the courtroom.

If you should desire to communicate with me at any time, please write down your message or question and pass the note to the marshal who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you returned to the courtroom so that I can address you orally. I caution you, however, with regard to any message or question you might send, that you should not tell me your numerical division at the time.

8 → Moved to end

This case involves several claims against Colonel Dorélien. Let me review the claims with you:

1. Marie Jeanne Jean brings her own claims of extrajudicial killing and crimes against humanity against Colonel Dorélien;
2. Marie Jeanne Jean, on behalf of her son Vladimyr Pierre, brings claims of extrajudicial killing and crimes against humanity against Colonel Dorélien;
3. Marie Jeanne Jean, on behalf of her daughter Michelda Pierre, brings claims of extrajudicial killing and crimes against humanity against Colonel Dorélien;
4. Lexiuste Cajuste brings claims of torture, arbitrary detention and crimes against humanity against Colonel Dorélien.

The Plaintiffs allege that Colonel Dorélien is liable for each of these violations: (1) under the law of command responsibility; or (2) because he aided and abetted the person or persons who committed extrajudicial killing, torture, arbitrary detention, ^{and} or crimes against humanity; or (3) because he conspired with others to commit extrajudicial killing, torture, arbitrary detention, ^{and} or crimes against humanity, against the civilian population of Haiti.

On the claims of Marie Jeanne Jean, Vladimy Pierre and Michelda for extrajudicial killing, they have the burden of proving each of the following elements by a preponderance of the evidence:

1. A person or persons deliberately killed Michel Pierre, nicknamed Jamedodo;
2. The person or persons who killed Michel Pierre acted under the actual or apparent authority, or color of law, of Haiti; and
3. The killing of Michel Pierre was not previously authorized by a judgment of a regular constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples, or lawfully carried out under the authority of a foreign nation.

Acts are done, "under color of law," when a government official is purporting or pretending to act in the performance of official duty. A government official acts "under color of law" not only when he or she acts within the limits of lawful authority, but also when he or she acts without or beyond the bounds of lawful authority. In addition, a private person can act "under color of law" when the person acts together with state officials or acts with significant state aid.

On Lexiuste Cajuste's claim for torture, he has the burden of proving each of the following elements by a preponderance of the evidence:

1. A person or persons intentionally inflicted severe pain ^{and} suffering, whether physical or mental, on Lexiuste Cajuste;
2. Lexiuste Cajuste was in the custody or physical control of that person or persons;
3. The person or persons who intentionally inflicted severe pain or suffering on Lexiuste Cajuste acted under the actual or apparent authority, or color of law, of Haiti; and
4. The severe pain or suffering was inflicted on Lexiuste Cajuste for such purposes as obtaining from him or another person information or a confession, punishing him for an act he or another person had committed or was suspected of having committed, intimidating or coercing him or another person, or for any reason based on discrimination of any kind.

Mental pain ^{and} or suffering refers to prolonged mental harm caused by or resulting from the intentional infliction or threatened infliction of severe physical pain or suffering; the threat of imminent death; or the threat that another person will ^{immediately} ~~imminently~~ be subjected to death or severe physical pain or suffering.

On Lexiuste Cajuste's claim for arbitrary detention, he has the burden of proving each of the following elements by a preponderance of the evidence:

1. Lexiuste Cajuste was detained;
2. The person or persons who detained Lexiuste Cajuste acted under the actual or apparent authority, or color of law, of Haiti; and
3. Any one of the following elements:
 - a. The detention of Lexiuste Cajuste was not accompanied by notice of charges; or
 - b. The person or persons detaining Lexiuste Cajuste did not give him an early opportunity to communicate with family or to consult counsel; or
 - c. The person or persons detaining Lexiuste Cajuste failed to bring him to trial within a reasonable time; or
 - d. Lexiuste Cajuste was tortured while in detention; or
 - e. The detention of Lexiuste Cajuste was incompatible with the principles of justice or with the dignity of the human person.

On the claims of Marie Jeanne Jean, Vladimyr Pierre, Michelda Pierre and Lexiuste Cajuste for crimes against humanity, they have the burden of proving each of the following elements by a preponderance of the evidence:

1. Any one of the following acts was committed against the victim, Lexiuste Cajuste or Michel Pierre nicknamed Jamedodo: murder; extermination; imprisonment; torture; *prosecution* persecution on political, racial or religious grounds; or other inhumane acts;
2. The person or persons who committed the act against the victim did so as part of a widespread or systematic attack directed against the civilian population of Haiti; and
3. The person or persons who committed the act against the victim knew or, based on the circumstances, should have known that the act was part of a widespread or systematic attack.

The term “widespread” refers to the large-scale nature of the attack and the number of targeted persons. The term “systematic” refers to the organized nature of the acts of violence and the unlikelihood that they occurred randomly.

The Plaintiffs seek to hold Colonel Dorélien responsible under the law of command responsibility. The law of command responsibility makes a military commander liable for the acts of subordinates, even if the commander did not order those acts. This is because the law imposes affirmative obligations on military commanders for the acts of subordinates.

To hold Colonel Dorélien liable under the law of command responsibility, the Plaintiffs must prove the following elements by a preponderance of the evidence:

1. A superior-subordinate relationship existed between Colonel Dorélien and the person or persons who committed extrajudicial killing, torture, arbitrary detention, and/or crimes against humanity against the victim, Lexiuste Cajuste or Michel Pierre nicknamed Jamedodo;
2. Colonel Dorélien knew, or should have known, in light of the circumstances at the time, that subordinates had committed, were committing, or were about to commit extrajudicial killing, torture, arbitrary detention, or crimes against humanity; and
3. Colonel Dorélien failed to take all necessary and reasonable measures to prevent extrajudicial killing, torture, arbitrary detention, or crimes against humanity, or failed to punish the subordinates after such abuses.

The first element of command responsibility is the existence of a superior-subordinate relationship between Colonel Dorélien and the person or persons who committed extrajudicial killing, torture, arbitrary detention, and/or crimes against humanity against the victim, Lexiuste Cajuste or Michel Pierre, nicknamed Jamedodo. To establish this element, the Plaintiffs must prove, by a preponderance of the evidence, that Colonel Dorélien had “effective control” over the person or persons who committed the abuses.

The “effective control” requirement is satisfied if Colonel Dorélien had the actual ability to exert control over subordinates. Even if Colonel Dorélien lacked legal authority, he nonetheless possessed “effective control” if he had the practical ability to exert control over subordinates. Colonel Dorélien’s control need not amount to formal powers of command. He had effective control if he exercised a degree of influence over the person or persons who committed the human rights abuses.

Colonel Dorélien cannot escape liability even if his command was shared by more than one official or his authority was shared collectively with others. Furthermore, Colonel Dorélien cannot escape liability where his own action or inaction caused or significantly contributed to a lack of effective control over his subordinates.

The second element of command responsibility is the actual or constructive knowledge by Colonel Dorélien of extrajudicial killing, torture, arbitrary detention ~~and~~/or crimes against humanity committed by subordinates. The Plaintiffs may prove this element, by the preponderance of the evidence, in one of two ways. First, the Plaintiffs may prove that Colonel Dorélien actually knew that subordinates had committed, were committing, or were about to commit extrajudicial killing, torture, arbitrary detention, or crimes against humanity. Second, the Plaintiffs may prove that, in light of the circumstances at the time, Colonel Dorélien should have known that subordinates had committed, were committing, or were about to commit extrajudicial killing, torture, arbitrary detention, or crimes against humanity.

With respect to this element, the Plaintiffs do not have to prove that Colonel Dorélien knew or should have known about the abuses against the specific victims in this case. In other words, Colonel Dorélien does not have to know the names of the victims in this case. Rather, the knowledge element is satisfied if the Plaintiffs prove that Colonel Dorélien knew, or should have known, that subordinates had committed, were committing, or were about to commit extrajudicial killing, torture, arbitrary detention, or crimes against humanity generally. Colonel Dorélien should have known that abuses were being committed if subordinates were engaged in a pattern, practice, or policy of committing human rights abuses.

The Plaintiffs may establish the third element by proving, by a preponderance of the evidence, that Colonel Dorélien failed to take all necessary and reasonable measures to prevent extrajudicial killing, torture, arbitrary detention or crimes against humanity, or failed to punish subordinates after the commission of such abuses. Failure to punish may be established by proof that Colonel Dorélien failed to properly investigate reliable allegations of human rights abuses, failed to punish subordinates through military sanctions or failed to submit these matters to appropriate authorities for investigation and prosecution.

~~Authority~~

Colonel Dorélien may also be found liable if you find that he aided and abetted the person or persons who committed extrajudicial killing, torture, arbitrary detention and/or crimes against humanity. In order to prove that Colonel Dorélien is liable for aiding and abetting, the Plaintiffs must prove the following elements by a preponderance of the evidence:

1. One or more of the wrongful acts that comprise the claim – extrajudicial killing, torture, arbitrary detention, or crimes against humanity – were committed;
2. Colonel Dorélien substantially assisted some person or persons who physically committed or caused extrajudicial killing, torture, arbitrary detention, or crimes against humanity; and
3. Colonel Dorélien knew that his actions or omissions would assist in the illegal or wrongful activity at the time he provided the assistance.

The “substantially assisted” requirement is satisfied if Colonel Dorélien provided practical assistance, encouragement, or moral support which had a substantial effect on the perpetration of the act. It is not necessary that Colonel Dorélien knew the precise wrongful act that was intended and which was committed so long as he was aware that a number of wrongful acts would probably be committed, and one of those crimes was in fact committed.

Colonel Dorélien must have intended to provide assistance to a wrongful act, or as a minimum, accepted that such assistance would be a possible and foreseeable consequence of his conduct. The assistance need not have been provided at the same time that a wrongful act was committed. Colonel Dorélien need not have been present during the commission of the wrongful act.

[INTENTIONALLY LEFT BLANK]

Colonel Dorélien may also be found liable if you find that he conspired with others to commit extrajudicial killing, torture, arbitrary detention, or crimes against humanity, against the civilian population of Haiti. A conspiracy is an agreement of two or more persons to commit one or more wrongful acts. In order to prove that Colonel Dorélien is liable for conspiracy, the Plaintiffs must prove the following elements by a preponderance of the evidence:

1. Two or more persons agreed to commit a wrongful act;
2. Colonel Dorélien joined the conspiracy knowing of at least one of the goals of the conspiracy and intending to help accomplish it; and
3. One or more of the violations was committed by someone who was a member of the conspiracy and acted in furtherance of the conspiracy.

For a conspiracy to have existed, it is not necessary that the conspirators made a formal agreement or that they agreed on every detail of the conspiracy. Each member of a conspiracy is liable for the actions of the other conspirators during the course and in furtherance of the conspiracy. Colonel Dorélien can be liable even if he neither planned nor knew about the particular overt act that caused the injury, so long as the purpose of the act was to advance the overall object of the conspiracy.

You are here to determine the liability of Colonel Dorélien as to each claim asserted from the evidence. You are not called upon to return a verdict as to the liability of any other person or persons. Nor are you to consider the liability that such other persons may or may not have, or whether such persons have been, will be or should be charged with liability in this or any other court. You must determine whether or not the evidence in the case convinces you, by a preponderance of the evidence, of Colonel Dorélien's liability without regard to any belief you may have about the liability of any other person or persons.

If you find in favor of any or all of the Plaintiffs and against Colonel Dorélien, then you must determine an amount that is fair compensation for the damages suffered by the Plaintiff or Plaintiffs. In considering the issue of compensatory damages, you are instructed that you should assess the amount you find to be justified by a preponderance of the evidence as full, just and reasonable compensation for all of the Plaintiff's damages, no more and no less. Compensatory damages are not allowed as a punishment and must not be imposed or increased to penalize Colonel Dorélien. Also, compensatory damages must not be based on speculation or guesswork because it is only actual damages that are recoverable.

On the other hand, compensatory damages are not restricted to actual loss of time or money, they cover both the mental and physical aspects of injury – tangible and intangible. Thus, no evidence of the value of such intangible things as physical or emotional pain and mental anguish has been or need be introduced. In that respect it is not value you are trying to determine, but an amount that will fairly compensate the Plaintiff for those claims of damage. There is no exact standard to be applied; any such award should be fair and just in light of the evidence.

You should consider the following elements in determining the amount of compensatory damages, to the extent you find them proved by a preponderance of the evidence:

- Emotional pain and suffering;
- Mental anguish;
- Physical Disfigurement
- Subsequent medical problems
- Physical Pain

In evaluating these items, you may consider the following factors:

- physical torture, including methods used or abuses suffered;
- mental abuse, including fright and anguish;
- length of time torture endured;
- length of detention;
- victim's age or other limiting physical or emotional characteristics

In making an award for such damages, you must use your best judgment and establish an amount of damages that is fair and reasonable in light of the evidence before you.

Each plaintiff must prove that the compensation he/she seeks relates to damages that naturally flow from the injuries proved. In other words, there must be a sufficient casual connection between the injuries sustained and the harm sustained by a plaintiff. This requirement is referred to as "proximate cause."

In addition to compensatory damages, you have the discretion to award punitive damages. Unlike compensatory damages, which are imposed to reimburse a Plaintiff for his or her injuries, punitive damages are designed to punish a Defendant for his wrongful conduct and to deter him and others from committing similar misconduct in the future. In the context of international law violations, punitive damages may be awarded to punish heinous conduct and to demonstrate that human rights abuses will not be tolerated. You may, in your discretion, award punitive damages in this case only if you find that Colonel Dorélien's conduct was intentional, malicious, wanton, or reckless.

In assessing the amount of punitive damages, you may consider such factors as:

- the reprehensibility of Colonel Dorélien's conduct;
- the nature and extent of harm to the Plaintiff that Colonel Dorélien's conduct caused or was intended to cause; and
- the wealth of Colonel Dorélien.

On the latter element, while you may consider the financial resources of Colonel Dorélien in fixing an amount of punitive damages, I instruct you that the burden is on Colonel Dorélien to show that his financial circumstances warrant a limitation of any award.

Should you decide to award punitive damages to any Plaintiff, in your computations you should determine the amount that is appropriate to punish Colonel Dorélien for the injuries to the Plaintiffs in this lawsuit and to deter others from engaging in similar conduct in the future. There is no exact standard for fixing the amount of punitive damages. Any award you make should be fair in the light of the evidence.

[INTENTIONALLY LEFT BLANK]

DUTIES TO DELIBERATE

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.

Any verdict you reach in the jury room must be unanimous. In other words, to return a verdict you must all agree. Your deliberations will be the secret; you will never have to explain your verdict to anyone.

It is your duty as jurors to discuss the case with one another in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after full consideration of the evidence with the other members of the jury. While you are discussing the case do not hesitate to re-examine your own opinion and change your mind if you become convinced that you were wrong. But do not give up your honest beliefs solely because the others think differently or merely to get the case over with.

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

ELECTION OF FOREPERSON AND EXPLANATION OF VERDICT FORM(S)

When you go to the jury room you should first select one of your members to act as your foreperson. The foreperson will preside over your deliberations and will speak for you here in court.

A form of verdict has been prepared for your convenience.

You will take the verdict form to the jury room and when you have reached

unanimous agreement you will have the foreperson fill in the verdict form, date and sign it, and then return to the courtroom.

If you should desire to communicate with me at any time, please write down your message or question and pass the note to the marshal who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you return to the courtroom so that I can address you orally. I caution you, however, with regard to any message or question you might send, that you should not tell me your numerical division at the time.