

IN THE IOWA DISTRICT COURT IN AND FOR CASS COUNTY

**THEODORE R. WONIO, Individually and
as Parent/Representative of MARJORIE
WONIO and THEODORE WONIO, JR.,
Minor Children, and ANDREA WONIO,
Individually and as Parent/Representative
of MARJORIE WONIO and THEODORE
WONIO, JR., Minor Children,**

Plaintiff,

vs.

MARK FUNK and STEVEN FUNK,

Defendant.

Case No. LACV026102

JURY INSTRUCTIONS

INSTRUCTION NO. 1

Statement of the Case

Members of the jury: on March 11, 2020, Plaintiffs were involved in an altercation with the Defendants in Cass County, Iowa. Plaintiffs claim that Steven Funk and Mark Funk committed assault and battery, false imprisonment, and intentional infliction of emotion distress, and that caused damages to the Plaintiffs.

Defendants Steven Funk and Mark Funk deny that they committed any of these claimed offenses and caused any damages.

In this case, you will be asked to determine whether the Defendants committed assault and battery, false imprisonment, and intentional infliction of emotion distress, and whether they cause any injury or damages.

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law which I will now give you.

INSTRUCTION NO. 2**Duties Of Judge and Jury, Instructions as Whole.**

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together because no one instruction includes all of the applicable law.

The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices, or emotions. It is common to have hidden or implicit thoughts that help us form our opinions. You are making very important decisions in this case. You must evaluate the evidence carefully. You must avoid decisions based on things such as generalizations, gut feelings, prejudices, fears, sympathies, stereotypes, or inward or outward biases. The law demands that you return a just verdict, based solely on the evidence, your reason and common sense, and these instructions. As jurors, your sole duty is to find the truth and do justice.

INSTRUCTION NO. 3**Burden of Proof: Preponderance of Evidence**

Unless stated otherwise, whenever a party must prove something, they must do so by the preponderance of the evidence.

Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

INSTRUCTION NO. 4**Evidence**

You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the Court.
3. Any other matter admitted (e.g. answers to interrogatories, matters which judicial notice was taken, etc.).

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

Sometimes, during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence, are not available to you.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside this courtroom.

INSTRUCTION NO. 5**Credibility of Witnesses**

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witnesses' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;

2. The witnesses' appearance, conduct, age, intelligence, memory and knowledge of the facts; and,
3. The witnesses' interest in the trial, their motive, candor, bias and prejudice.

INSTRUCTION NO. 6

Prior Sworn Testimony

Certain deposition testimony has been read into evidence from a person's prior sworn testimony. Prior sworn testimony taken under oath before this trial and preserved in writing. Consider that testimony as if it had been given in court.

INSTRUCTION NO. 7

Statements by a Party Opponent

You have heard evidence claiming a party made statements before this trial while not under oath.

If you find such a statement was made, you may regard the statement as evidence in this case the same as if the party had made it under oath during the trial.

If you find such a statement was made and was inconsistent with the party's testimony during the trial, you may also use the statement as a basis for disregarding all or part of the party's testimony during the trial but you are not required to do so. You should not disregard the party's testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

INSTRUCTION NO. 8**Cause - Defined**

The conduct of a party is a cause of damage when the damage would not have happened except for the conduct.

INSTRUCTION NO. 9**Intent - Defined**

Intent means doing something on purpose as opposed to accidentally. Because intent requires a finding of what a person is thinking when doing an act, it is seldom capable of being proven by direct evidence. You may use your common experience when considering all of the facts surrounding the doing of an act to determine what a person's intent was when committing the act. You may find that if a person does an act on purpose, the person also intended the natural results of the act.

INSTRUCTION NO. 10**Assault - Essentials for Recovery**

In order to prove the claim of assault, one or more of Plaintiffs must prove all of the following propositions:

1. ^{SB} ~~The~~ one or more of the Defendants have intentionally and unlawfully threatened one or more of the Plaintiffs with the potential to enact violence.
2. The act was done with the intent to put one or more of the Plaintiffs in fear of physical pain or injury or in fear of physical contact, which would be insulting or offensive.
3. One or more of the Plaintiffs reasonably believed that the acts would be carried out immediately.
4. ^{SB} ~~The~~ one or more of the Defendant's acts was a cause of one or more of the Plaintiff's damage.
5. The amount of damage to an individual Plaintiff.

If one or more of the Plaintiffs has failed to prove any of these propositions, that Plaintiff is not entitled to damages. If one or more of the Plaintiffs has proved all of these propositions, that Plaintiff is entitled to damages in some amount.

INSTRUCTION NO. 11**Assault - Defined**

fear (3B)

An assault is committed when a person does: (1) an act intended to put another in fear of physical pain or injury; (2) an act intended to put another in fear of physical contact which a reasonable person would deem insulting or offensive; and the victim reasonable believes that the act may be carried out immediately.

Threatening words alone do not constitute an assault unless it appears that the person has the ability to carry out the threat at the time the words were spoken.

INSTRUCTION NO. 12**False Imprisonment - Essentials for Recovery**

In order to prove the claim of false imprisonment, one or more of the Plaintiffs must prove all of the following propositions:

1. One or more of the Plaintiffs were detained or restrained against their will.
2. The Detention or restraint was unlawful.
3. One or more of the Defendant's conduct was a cause of one or more of the Plaintiff's damage.
4. The amount of damage to an individual Plaintiff.

A Plaintiff need not prove a physical injury to support a claim for false imprisonment.

If one or more of the Plaintiffs has failed to prove any of these propositions, that Plaintiff is not entitled to damages. If one or more of the Plaintiffs has proved all of these propositions, that Plaintiff is entitled to damages in some amount.

INSTRUCTION NO. 13**Emotional Distress - Intentional Infliction- Essentials for Recovery**

To entitle one or more of the Plaintiffs to recover on the claim for the tortious infliction of severe emotional distress one or more Plaintiffs must prove all of the following propositions:

1. Outrageous conduct by one or more of the Defendants.
2. One or more of the Defendants intentionally caused emotional distress or acted with reckless disregard of the probability of causing emotional distress.

3. One or more of the Plaintiffs suffered severe or extreme emotional distress.
4. One or more of the Defendants' outrageous conduct was a cause of one or more of the Plaintiffs' emotional distress.
5. The nature and extent of damage to an individual Plaintiff.

If one or more of the Plaintiffs has failed to prove any of these propositions, that Plaintiff is not entitled to damages. If one or more of the Plaintiffs has proved all of these propositions, that Plaintiff is entitled to damages in some amount.

INSTRUCTION NO. 14

Outrageous Conduct - Definition

The term "outrageous conduct" means conduct so extreme as to go beyond all possible bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized community.

Outrageous conduct does not extend to mere insults, indignities, threats, annoyances, petty oppressions, hurt feelings, bad manners or other trivialities which a reasonable person could be expected to endure. All persons must necessarily be expected and required to be hardened to a certain amount of rough language and to occasional acts that are inconsiderate and unkind.

INSTRUCTION NO. 15

Intentional or Reckless - Definition

A person intends to inflict emotional distress when they want to cause distress, or know such distress is substantially certain to result from their conduct.

A person's conduct is reckless if they know or have reason to know their conduct creates a high degree of probability that emotional distress will result and they act with deliberate disregard of that probability.

INSTRUCTION NO. 16**Severe or Extreme Emotional Distress - Definition**

The emotional distress must in fact exist, and it must be severe or extreme, but it need not reveal itself physically.

The term “severe or extreme” means substantial or enduring as distinguished from mild or brief.

The term “emotional distress” includes all highly unpleasant mental reactions such as fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment and worry. It must be so substantial or enduring that no reasonable person could be expected to bear it.

INSTRUCTION NO. 17**Damages - Personal Injury**

If you find that one or more of the Plaintiffs are entitled to recover damages, you shall consider the following items as to that Plaintiff:

1. Mental Pain and Suffering- Past. Mental pain and suffering from the date of injury to the present time. Mental pain and suffering may include, but is not limited to, mental anguish or loss of enjoyment of life.
2. Mental Pain and Suffering- Future. The present value of the future mental pain and suffering.

The amount you assess for mental pain and suffering in the past and future cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties. The amount you assess for any item of damage must not exceed the amount caused by a party as proved by the evidence.

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage. Similarly, damages awarded to one party shall not be included in any amount awarded to another party. The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

INSTRUCTION NO. 18**Damage Calculation**

In arriving at an item of damage you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage and agreeing in advance that the average of those estimates shall be your item of damage.

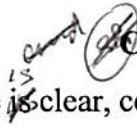
INSTRUCTION NO. 19**Punitive Damages**

Punitive damages may be awarded if one or more of the Plaintiffs, have proven by a preponderance of clear, convincing and satisfactory evidence the conduct of one or more of the Defendants constituted a willful and wanton disregard for the rights or safety of another and caused actual damage to one or more of the Plaintiffs.

Punitive damages are not intended to compensate for injury but are allowed to punish and discourage a Defendant and others from like conduct in the future. You may award punitive damages only if a Defendant's conduct warrants a penalty in addition to the amount you award to compensate for one or more of the Plaintiffs' actual injuries.

There is no exact rule to determine the amount of punitive damages, if any, you should award. You may consider the following factors:

1. The nature of that Defendant's conduct that harmed a Plaintiff.
2. The amount of punitive damages which will punish and discourage like conduct by that Defendant. You may consider that Defendant's financial condition or ability to pay. You may not, however, award punitive damages solely because of that Defendant's wealth or ability to pay.
3. The actual damages you award to a Plaintiff. The amount awarded for punitive damages must be reasonably related to the amount of actual damages you award to the Plaintiffs.
4. The existence and frequency of prior similar conduct.

INSTRUCTION NO. 20**Clear, Convincing & Satisfactory Evidence**

Evidence ~~is~~ clear, convincing and satisfactory if there is no serious or substantial uncertainty about the conclusion to be drawn from it.

INSTRUCTION NO. 21**Willful And Wanton - Defined**

Conduct is willful and wanton when a person intentionally does an act of an unreasonable character in disregard of a known or obvious risk that is so great as to make it highly probable that harm will follow.

INSTRUCTION NO. 22**Use of Electronic Devices**

You may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media such as text messages, Facebook, LinkedIn, YouTube, Twitter, email, etc. Do not do any research or make any investigation about this case on your own. Do not visit or view any place discussed in this case, and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony. Also, do not research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge. This includes using the Internet to research events or people referenced in the trial.

This case will be tried on evidence presented in the courtroom. If you conduct independent research, you will be relying on matters not presented in court. The parties have a right to have this case decided on the evidence they know about and that has been introduced here in court. If you do some research or investigation or experiment that we do not know about, then your verdict may be influenced by inaccurate, incomplete or misleading information that has not been tested by the trial process, including the oath to tell the truth and by cross-examination. All of the parties are entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide a case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this state and you will have done an injustice. It is very important

that you abide by these rules. Failure to follow these instructions may result in the case having to be retried and could result in you being held in contempt and punished.

It is important that we have your full and undivided attention during this trial.

INSTRUCTION NO. 23

Prohibition On Communication About the Case

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone or computer, the Internet, any Internet service, or any text or instant messaging service; or any Internet chat room, blog, or website such as Facebook, LinkedIn, YouTube, or Twitter, to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict.

Your cell phones must be surrendered to the court attendant during deliberations. If the length of deliberations causes you to need to make a call regarding personal arrangements such as child care or other scheduling issues, you may make such calls when the jury takes a break and temporarily stops deliberations, but you must not discuss the case until after you have reached your verdict and I have released you from jury duty.

INSTRUCTION NO. 24

Notes

During the trial, you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these are notes and not evidence. Generally, they reflect the recollection or impressions of the evidence as viewed by the person taking them and may be inaccurate or incomplete.

Upon reaching a verdict, leave the notes in the jury room, and they will be destroyed.

INSTRUCTION NO. 25**Deliberation**

In conducting your deliberations and returning your verdict, you must follow these rules:

First, when you go to the jury room, you must select a foreperson to preside over your discussions and to speak for you here in court. It will be his or her duty to see that discussion is carried on in an orderly fashion, the issues are discussed fully and freely, and each juror is given an opportunity to express her views.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved and you may hesitate later to change an announced position, even if shown it may be incorrect.

You should try to reach agreement, if you can do so without violence to your individual judgment. Do not be afraid to change your opinion if the discussion persuades you that you should, but do not come to a decision simply because other jurors think it is right or simply to reach a verdict. Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to their views. Remember at all times, you are not partisans, but judges of the facts. Your only interest in this case is to seek the truth from the evidence, and to do justice.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the court attendant, signed by one or more jurors. I will respond as soon as possible, either in writing or orally in open court. If you are brought into open court, you should not tell anyone - including me - how your vote stands numerically, unless I specifically ask you for that information.

Fourth, your verdict must be based solely on the evidence and on the law I have given to you in my instructions. Nothing I have said or done is intended to suggest what your verdict should be - that is entirely for you to decide.

Fifth, I am giving you two verdict forms. A verdict form is simply the written notice of the decisions that you reach in this case. You should carefully review the verdict forms and answer the questions presented in the forms as instructed.

During the first six hours of your deliberations, excluding meals and recesses outside the jury room, your decisions must be unanimous. If you all agree, the verdict forms must be signed by your foreperson. After deliberating for six hours from _____ o'clock __.m., excluding meals and recesses outside the jury room, then it is necessary that only seven of you agree on the answers to the questions. In that case, the verdict forms must be signed by all seven jurors who agree. When you have agreed upon the verdicts and they have been signed as appropriate, advise the court attendant that you are ready to return to the courtroom.

Scott J. Beattie
Judge, Iowa District Court