

IN THE IOWA DISTRICT COURT IN AND FOR JACKSON COUNTY

SHELDON WOODHURST and)	
CARLA WOODHURST,)	
)	
Plaintiffs,)	Case No. LACV 027199
vs.)	
)	PLAINTIFFS' PROPOSED
DAVID ZABRANSKY,)	JURY INSTRUCTIONS
)	
Defendant.)	

COMES NOW Sheldon Woodhurst and Carla Woodhurst, Plaintiffs, by Pillers and Richmond, their attorneys, and in support of Plaintiffs' Proposed Jury Instructions, submit the following.

PILLERS & RICHMOND

By: /s/ David M. Pillers
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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of December, 2017, I filed the foregoing with the Clerk of Court using the electronic filing system which will send notifications of such filing to all counsel of record.

/s/ David M. Pillers

STATEMENT OF THE CASE

Between the evening of November 21, 2009 and the early morning of November 22, 2009, Zabransky patronized the businesses of Driftwood Bar & Grill (Driftwood) and Lucky 7. During that time, Zabransky was sold, given or served alcoholic beverages or beer by agents, representative, or employees of Driftwood and Lucky 7.

On November 22, 2009 at approximately 1:30 a.m., Zabransky committed an assault and battery on the plaintiff, Sheldon Woodhurst, by shooting Sheldon in the abdomen at close range with a shotgun.

Plaintiff, Sheldon Woodhurst, alleges that Zabransky did commit an assault and battery on him while intoxicated.

As a proximate result of Defendant's negligence, Plaintiff Sheldon Woodhurst alleges that he suffered serious, painful and permanent injuries, disability and disfigurement.

Plaintiff, Carla Woodhurst, alleges that due to the resulting injuries to her husband, Sheldon Woodhurst, she has been deprived of the companionship, aid, services, affection and society of her husband.

Defendant denies negligence and denies that his actions were responsible for any damages to Plaintiffs and further denies that Plaintiffs were injured or damaged to the extent claimed.

JURY INSTRUCTION NO. _____

Members of the Jury: In this case plaintiffs, Sheldon Woodhurst and Carla Woodhurst, allege that Zabransky did commit an assault and battery on him.

The defendant, David Zabransky, denies negligence, denies causing the damages claimed by Plaintiffs, and denies the extent of Plaintiffs alleged 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.

Plaintiffs' Tendered Instruction No. ____

Iowa Civil Jury Instruction No. 100.1

___ Given

___ Refused

___ Withdrawn

JURY INSTRUCTION NO. _____

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.

Do not be influenced by any personal likes or dislikes, sympathy, bias, prejudices or emotions.

Plaintiffs' Tendered Instruction No. ____

Iowa Civil Jury Instruction No. 100.2

___ Given

___ Refused

___ Withdrawn

JURY INSTRUCTION NO. _____

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.

Plaintiffs' Tendered Instruction No. ____

Iowa Civil Jury Instruction No. 100.3

___ Given

___ Refused

___ Withdrawn

JURY INSTRUCTION NO. _____

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. Stipulations which are agreements between the attorneys.
4. Any other matter admitted (e.g. answers to interrogatories, matters which judicial notice was taken, and 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 the courtroom.

Plaintiffs' Tendered Instruction No. _____

Iowa Civil Jury Instruction No. 100.4

___ Given
___ Refused
___ Withdrawn

JURY INSTRUCTION NO. _____

Certain Testimony has been read into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. Consider that testimony as if it had been given in court.

Plaintiffs' Tendered Instruction No. ____

Iowa Civil Jury Instruction No. 100.5

___ Given

___ Refused

___ Withdrawn

JURY INSTRUCTION NO. _____

During this trial, you have heard the word 'interrogatory'. An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

Plaintiffs' Tendered Instruction No. _____

Iowa Civil Jury Instruction No. 100.6

___ Given
___ Refused
___ Withdrawn

JURY INSTRUCTION NO. _____

The Court has decided to accept as proved the fact that on June 25, 2010, the Defendant, David Zabransky, shot the Plaintiff, Sheldon Woodhurst and that he plead guilty to the offenses of Willful Injury, in violation of Iowa Code 708.4 and Going Armed with Intent, in violation of Iowa Code 708.8. You will regard as being conclusively proved that the Defendant, David Zabransky, shot the Plaintiff, Sheldon Woodhurst.

Plaintiffs' Tendered Instruction No. ____

Iowa Civil Jury Instruction No. 100.7

___ Given

___ Refused

___ Withdrawn

JURY INSTRUCTION NO. _____

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.

Plaintiffs' Tendered Instruction No. ____

Iowa Civil Jury Instruction No. 100.9

___ Given

___ Refused

___ Withdrawn

JURY INSTRUCTION NO. _____

An expert witness was asked to assume certain facts were true and to give an opinion based on that assumption. This is called a hypothetical question. If any fact assumed in the question has not been proved by the evidence, you should decide if that omission affects the value of the opinion.

Plaintiffs' Tendered Instruction No. ____

Iowa Civil Jury Instruction No. 100.11

____ Given
____ Refused
____ Withdrawn

JURY INSTRUCTION NO. _____

You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

Plaintiffs' Tendered Instruction No. ____

Iowa Civil Jury Instruction No. 100.12

____ Given
____ Refused
____ Withdrawn

JURY INSTRUCTION NO. _____

You have heard evidence claiming a witness made statements before this trial while not under oath which were inconsistent with what the witness said in this trial.

Because the witness did not make the earlier statements under oath, you may use them only to help you decide if you believe the witness.

Decide if the earlier statements were made and whether they were inconsistent with testimony given at trial. You may disregard all or any part of the testimony if you find the statements were made and they were inconsistent with the testimony given at trial, but you are not required to do so.

Do not disregard the testimony if other evidence you believe supports it or if you believe it for any other reason.

Plaintiffs' Tendered Instruction No. ____

Iowa Civil Jury Instruction No. 100.13

____ Given
____ Refused
____ Withdrawn

JURY INSTRUCTION NO. _____

In order to prove the claim of assault, the plaintiff must prove all of the following propositions:

1. The defendant shot the Plaintiff, Sheldon Woodhurst.
2. The act was done with the intent to put in fear of physical pain or injury or in fear of physical contact which would be insulting or offensive.
3. Sheldon Woodhurst reasonably believed that the act would be carried out immediately.
4. The defendant's act was a cause of plaintiff's damage.
5. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount.

Plaintiffs' Tendered Instruction No. _____

Iowa Civil Jury Instruction No. 1900.1

___ Given
___ Refused
___ Withdrawn

JURY INSTRUCTION NO. _____

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 reasonably 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.

Plaintiffs' Tendered Instruction No. ____

Iowa Civil Jury Instruction No. 1900.2

____ Given
____ Refused
____ Withdrawn

JURY INSTRUCTION NO. _____

In order to prove the claim of battery, the plaintiff must prove all of the following propositions:

1. The defendant shot the Plaintiff, Sheldon Woodhurst.
2. The act was done with the intent to cause physical pain or injury or insulting or offensive bodily contact.
3. The defendant's act resulted in physical pain or injury or insulting or offensive bodily contact.
4. The defendant's act was a cause of plaintiff's damage.
5. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount.

Plaintiffs' Tendered Instruction No. ____

Iowa Civil Jury Instruction No. 1900.3

____ Given
____ Refused
____ Withdrawn

JURY INSTRUCTION NO. _____

A battery is committed when a person intentionally does:

1. An act resulting in bodily contact causing physical pain or injury.
2. An act results in bodily contact which a reasonable person would deem insulting or offensive.

Plaintiffs' Tendered Instruction No. _____

Iowa Civil Jury Instruction No. 1900.4

____ Given
____ Refused
____ Withdrawn

JURY INSTRUCTION NO. _____

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.

Plaintiffs' Tendered Instruction No. ____

Iowa Civil Jury Instruction No. 1900.5

____ Given
____ Refused
____ Withdrawn

JURY INSTRUCTION NO. _____

Upon retiring you shall select a foreman or forewoman. It will be his or her duty to see discussion is carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express his or her views.

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 later hesitate to change an announced position even if shown it may be incorrect. Remember you are not partisans or advocates, but are judges - judges of the facts. Your sole interest is to find the truth and do justice.

Plaintiffs' Tendered Instruction No. ____

Iowa Civil Jury Instruction No. 100.13

___ Given

___ Refused

___ Withdrawn

JURY INSTRUCTION NO. _____

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.

Plaintiffs' Tendered Instruction No. ____

Iowa Civil Jury Instruction No. 100.21

___ Given

___ Refused

___ Withdrawn

JURY INSTRUCTION NO. _____

If you find the Plaintiffs, Sheldon Woodhurst and Carla Woodhurst, are entitled to recover damages, you shall consider the following items:

1. The reasonable value of necessary hospital charges, doctor charges, prescriptions, and other medical services from the date of injury to the present time.
2. The present value of reasonable and necessary hospital charges, doctor charges, prescriptions, and other medical services which will be incurred in the future.
3. The reasonable value of lost wages from the date of injury to the present time.
4. The present value of loss of future earning capacity. Loss of future earning capacity is the reduction in the ability to work and earn money generally, rather than in a particular job.
5. Loss of function of the mind and body from the date of injury to the present time. Loss of mind and body is the inability of a particular part of the mind and body to function in a normal manner.
6. Future loss of function of the mind and body.
7. The present value of future loss of function of the mind and body.
8. Physical and mental pain and suffering from the date of injury to the present time. Physical pain and suffering may include, but is not limited to, bodily suffering or discomfort. Mental pain and suffering may include, but is not limited to, mental anguish or loss of enjoyment of life.
9. Future physical and mental pain and suffering.

The amount you assess for physical and mental pain and suffering in the past and future, future earning capacity, loss of function of the mind and body 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.

Plaintiffs Tendered Instruction No. ____

Iowa Civil Jury Instruction No. 200.1

___ Given

___ Refused

___ Withdrawn

JURY INSTRUCTION NO. _____

The reasonable value of necessary hospital charges, doctor charges, prescriptions and other medical services from the date of injury to the present time.

Plaintiffs Tendered Instruction No. ____

Iowa Civil Jury Instruction No. 200.6

___ Given

___ Refused

___ Withdrawn

JURY INSTRUCTION NO. _____

The present value of reasonable and necessary hospital charges, doctor charges, prescriptions and other medical services which will be incurred in the future.

Plaintiffs Tendered Instruction No. ____

Iowa Civil Jury Instruction No. 200.7

___ Given

___ Refused

___ Withdrawn

JURY INSTRUCTION NO. _____

The reasonable value of lost wages from the date of injury to the present time.

Plaintiffs Tendered Instruction No. ____

Iowa Civil Jury Instruction No. 200.8

___ Given

___ Refused

___ Withdrawn

JURY INSTRUCTION NO. _____

The present value of loss of future earning capacity. Loss of future earning capacity is the reduction in the ability to work and earn money generally, rather than in a particular job.

Plaintiff Tendered Instruction No. ____

Iowa Civil Jury Instruction No. 200.9

___ Given

___ Refused

___ Withdrawn

JURY INSTRUCTION NO. _____

Loss of function of the mind and body from the date of injury to the present time.

Loss of mind and body is the inability of a particular part of the mind or body to function in a normal manner.

Plaintiffs Tendered Instruction No. ____

Iowa Civil Jury Instruction No. 200.10

___ Given

___ Refused

___ Withdrawn

JURY INSTRUCTION NO. _____

Future loss of function of the mind and body.

Plaintiffs Tendered Instruction No. ____

Iowa Civil Jury Instruction No. 200.11

___ Given

___ Refused

___ Withdrawn

JURY INSTRUCTION NO. _____

The present value of future loss of function of the mind and body.

Plaintiffs Tendered Instruction No. ____

Iowa Civil Jury Instruction No. 200.11B

____ Given

____ Refused

____ Withdrawn

JURY INSTRUCTION NO. _____

Physical and mental pain and suffering from the date of injury to the present time.

Physical pain and suffering may include, but is not limited to, bodily suffering or discomfort.

Mental pain and suffering may include, but is not limited to, mental anguish or loss of enjoyment of life.

Plaintiffs Tendered Instruction No. ____

Iowa Civil Jury Instruction No. 200.12

____ Given

____ Refused

____ Withdrawn

JURY INSTRUCTION NO. _____

Future physical and mental pain and suffering.

Plaintiffs Tendered Instruction No. ____

Iowa Civil Jury Instruction No. 200.13A

____ Given

____ Refused

____ Withdrawn

JURY INSTRUCTION NO. _____

The present value of future physical and mental pain and suffering.

Plaintiffs Tendered Instruction No. ____

Iowa Civil Jury Instruction No. 200.13B

___ Given

___ Refused

___ Withdrawn

JURY INSTRUCTION NO. _____

Future damages for loss of earning capacity, medical expenses and other economic losses must be reduced to present value. "Present value" is a sum of money paid now in advance which, together with interest earned at a reasonable rate of return, will compensate the plaintiff for future economic losses.

Plaintiffs Tendered Instruction No. ____

Iowa Civil Jury Instruction No. 200.35A

____ Given

____ Refused

____ Withdrawn

JURY INSTRUCTION NO. _____

Punitive damages may be awarded if the plaintiff has proven by a preponderance of clear, convincing and satisfactory evidence the defendant's conduct constituted a willful and wanton disregard for the rights or safety of another and caused actual damage to the plaintiff.

Punitive damages are not intended to compensate for injury but are allowed to punish and discourage the defendant and others from like conduct in the future.

There is no exact rule to determine the amount of punitive damages, if any, you should award. In fixing the amount of punitive damages, you may consider all the evidence including:

1. The nature of defendant's conduct.
2. The amount of punitive damages which will punish and discourage like conduct by the defendant in view of his financial condition.
3. The plaintiff's actual damages.

Plaintiffs Tendered Instruction No. ____

Iowa Civil Jury Instruction No. 210.1

____ Given
____ Refused
____ Withdrawn

JURY INSTRUCTION NO. _____

Question No. 1: Do you find by a preponderance of clear, convincing and satisfactory evidence the conduct of the defendant constituted willful and wanton disregard for the rights or safety of another?

Answer "Yes" or "No"

ANSWER:

[If your answer to Question No. 1 is "No" do not answer Question Nos. 2 and 3]

Question No. 2: What amount of punitive damages, if any, do you award?

ANSWER:

[If your answer to Question No. 2 is "None" do not answer Question No. 3]

Question No. 3: Was the conduct of the defendant directed specifically at Sheldon Woodhurst?

Answer "Yes" or "No"

ANSWER:

Question No. 4: Is (principal or employer) liable for punitive damages?

Answer "Yes" or "No"

ANSWER:

[If your answer to Question No. 4 is "No" do not answer Question No. 5]

Question No. 5: What amount of punitive damages, if any, do you award against (name of principal or employer)?

ANSWER:

Plaintiffs Tendered Instruction No. ____

Iowa Civil Jury Instruction No. 210.2

____ Given

____ Refused

____ Withdrawn

JURY INSTRUCTION NO. _____

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.

Plaintiffs Tendered Instruction No. ____

Iowa Civil Jury Instruction No. 210.4

☐ Given

☐ Refused

☐ Withdrawn

JURY INSTRUCTION NO. _____

I am giving you _____ verdict forms [and special interrogatories]. During the first six hours of deliberations, excluding meals and recesses outside your jury room, your decision must be unanimous. If you all agree, the verdict [and interrogatories] must be signed by your foreman or forewoman.

After deliberating for six hours from _____ o'clock _____.m. excluding meals or recesses outside your jury room, then it is necessary that only (seven) (six)* of you agree upon the answers to the questions. In that case, the verdict [and interrogatories] must be signed by all (seven) (six)* jurors who agree.

When you have agreed upon the verdict [and interrogatories] and appropriately signed it, tell the Court Attendant.

Comment

Note: *Use if a juror has been excused during the trial.

Plaintiffs Tendered Instruction No. ____

Iowa Civil Jury Instruction No. 300.1

___ Given

___ Refused

___ Withdrawn