

IN THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY

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LINN COUNTY IOWA

DUSTIN KINDIG,

Plaintiff,

vs.

SPENCER NEWMAN and
JOSHUA BURNS

Defendants.

No. LACV089801

STATEMENT OF THE CASE,
INSTRUCTIONS OF THE COURT,
AND VERDICT FORM

Members of the Jury:

In this case plaintiff Dustin Kindig claims that he was assaulted by Defendants Spencer Newman and Joshua Burns on October 21, 2017, in Cedar Rapids, Linn County, Iowa. He claims that the acts of each defendant was the cause of damages.

Each defendant denies that he assaulted Dustin Kindig. Each defendant claims that he acted in self-defense. Each defendant denies that his acts were the cause of the damages claimed by Plaintiff. Defendants also dispute the nature and extent of the injuries alleged by Plaintiff.

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.

YOU ARE INSTRUCTED AS FOLLOWS:

INSTRUCTION NO. 1.

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

You must consider all 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.

INSTRUCTION NO. 2.

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. 3.

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 into evidence.

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.

INSTRUCTION NO. 4.

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. 5.

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.

INSTRUCTION NO. 6.

Certain testimony has been read into evidence from a deposition or shown by videotape. A deposition is testimony taken under oath before the trial and preserved. You are to consider that testimony as if it had been given in court.

INSTRUCTION NO. 7.

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.

INSTRUCTION NO. 8.

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.

INSTRUCTION NO. 9.

You have heard evidence claiming all of the parties made statements before this trial both under oath and 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 by a party and was inconsistent with that party's testimony during the trial you may also use the statement as a basis for disregarding all or any part of that party's testimony during the trial but you are not required to do so. You should not disregard a party's testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

INSTRUCTION NO. 10.

You have heard evidence claiming non-party witnesses 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.

INSTRUCTION NO. 11.

You have heard evidence of Plaintiff Dustin Kindig's character for violence. You have also heard evidence of his peaceful character.

You may use that evidence only to help evaluate the defendants' claims that they acted to defend themselves, as explained to you in other instructions.

INSTRUCTION NO. 12.

Plaintiff claims that he was assaulted by Defendant Spencer Newman and Defendant Joshua Burns. You must consider plaintiff's claim against each defendant separately. In order to prove the claim of battery, against any one defendant the plaintiff, Dustin Kindig, must prove all of the following propositions:

1. The defendant intentionally battered Plaintiff Dustin Kindig.
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 as to any defendant, the plaintiff is not entitled to damages from that defendant. If the plaintiff has proved all of these propositions, as to any defendant then you will consider that defendant's defense of self-defense as explained to you in these instructions.

INSTRUCTION NO. 13.

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.

INSTRUCTION NO. 14.

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

INSTRUCTION NO. 15.

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. 16.

The defendants each claim they were acting in self-defense:

To establish this defense, each defendant must prove both of the following propositions:

1. The defendant reasonably believed that the use of force was necessary to defend himself from any actual or imminent use of unlawful force.
2. The force that the defendant used was no more which a reasonable person, in like circumstances, would judge to be necessary to prevent an injury or loss.

If a defendant has failed to prove either of these propositions, then that defendant has not proved his defense. If any defendant has proved both of these propositions, then plaintiff is not entitled to recover from that defendant.

INSTRUCTION NO. 17.

A defendant is justified in the use of reasonable force in the defense of himself when the defendant reasonably believes that such force is necessary to defend himself from any actual or imminent use of unlawful force.

INSTRUCTION NO. 18.

"Reasonable force" means that force and no more which a reasonable person, in like circumstances, would judge to be necessary to prevent an injury or loss and can include deadly force if it is reasonable to believe that such force is necessary to avoid injury or risk to one's life or safety, or it is reasonable to believe that such force is necessary to resist a like force or threat.

A person may be wrong in the estimation of the danger or the force necessary to repel the danger as long as there is a reasonable basis for the belief of the person and the person acts reasonably in the response to that belief.

A person who is not engaged in illegal activity has no duty to retreat from any place where the person is lawfully present before using force to defend himself.

INSTRUCTION NO. 19.

If you find plaintiff, Dustin Kindig, is entitled to recover damages, you shall consider the following items:

1. Past Medical Expenses. The reasonable value of necessary hospital charges, doctor charges, prescriptions, and other medical services from the date of injury to the present time. In determining the reasonable cost of necessary hospital charges, doctor charges, prescriptions, and other medical services, you may consider the amount billed, the amount actually paid, or any other evidence of what is reasonable and proper for such medical expense. The parties have stipulated that \$76,812.07 has been billed, \$39,345.74 has been paid, and \$11,782.35 remains owed.
2. Future Medical Expenses. The present value of reasonable and necessary hospital charges, doctor charges, surgeries, prescriptions and other medical services, which will be incurred in the future.
3. Physical and Mental Pain and Suffering and Emotional Distress – Past. 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. If you award Plaintiff past medical expenses, you must award some amount of damages for past physical and mental pain and suffering.
4. Physical and Mental Pain and Suffering and Emotional Distress– Future. The present value of future physical and mental pain and suffering. If you award Plaintiff future medical expenses, you must award some amount of damages for future physical and mental pain and suffering.
5. Physical and Mental Impairment – Past. The disability of mind and body, impairment of physical functions, and deprivation of mental powers from the date of injury to present. Impairment of mind and/or body is the inability of a particular part of the mind and/or body to

function in a normal manner. This element of damage relates to functional impairment.

6. Physical and Mental Impairment – Future. The present value of disability of mind and body, impairment of physical functions, and deprivation of mental powers from the present.
7. Past Loss of Income. The reasonable value of lost wages and or time away from business from the date of injury to the present time.

The amount you assess for physical pain and suffering and for loss of function of the body 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 the defendant 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. The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

INSTRUCTION NO. 20.

If you find Plaintiff had a dry eye condition and/or depression before this incident and either of these conditions were aggravated or made active by this incident causing further suffering then he is entitled to recover damages caused by the aggravation. He is not entitled to recover for any physical ailment or disability which existed before this incident or for any injuries or damages which he now has which were not caused by the defendants' actions.

INSTRUCTION NO. 21.

A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Dustin Kindig is 47.79 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence, about Dustin Kindig's health, habits, occupation, and lifestyle, when deciding issues of future damages.

INSTRUCTION NO. 22.

Future damages 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 losses.

INSTRUCTION NO. 23.

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. 24.

The Court has not by its instructions or by any ruling made, or by any act done, or by anything said during the trial, or by any facial expression, gesture or tone of voice, intended or attempted to give any intimation or opinion as to what the facts are or what are not the facts, what the proof is or what it is not, nor what your verdict should be.

During the trial, the Court has ruled upon objections to evidence which have been made by counsel. Such rulings are the responsibility of the Court, and in your consideration of the case, you will give no significance or weight whatever to such rulings and you will consider only such evidence which has been received before you as part of the record in this case.

INSTRUCTION NO. 25.

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. 26.

You may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media such as text messages, Facebook, MySpace, 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.

INSTRUCTION NO. 27.

When you begin your deliberations, you should select a foreman or forewoman. He or she shall see that your deliberations are carried on in an orderly manner, that the issues are fully and freely discussed, and that every juror is given an opportunity to express his or her views.

In order to return a verdict, each juror must agree to it. Your verdict must be unanimous except as further explained in these instructions.

It is your duty as jurors to consult with one another and reach an agreement, if you can do so without compromising your individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with the other jurors.

During your deliberations, do not hesitate to re-examine your view and change your opinion if convinced it is wrong. But do not change your opinion as to the weight or effect of the evidence just because it is the opinion of the other jurors, or for the mere purpose of returning a verdict.

Remember, you are judges of the facts. Your sole duty is to find the truth and do justice.

Occasionally, after a jury retires to the jury room, the members have questions. I have prepared the final instructions only after carefully considering the evidence presented in the case with the lawyers. I have tried to use language which is generally understandable. Usually your questions about the instructions can be answered if you carefully re-read them. If, however, you feel it necessary to ask a question about the

INSTRUCTION NO. 27 (Cont.)

Instructions, you must do so in writing. I cannot communicate with you without first discussing your question and the potential answer with the lawyers.

The court attendant who works with you in this case from now on is in the same position as I am. The court attendant will take an oath not to communicate with you about your deliberations. The court attendant has not spoken to you during the trial except about the mechanics of being a juror; the court attendant will not speak to you when you have retired to deliberate except to ask if you have agreed upon a verdict, and to manage the logistics of your service. Please do not put the court attendant on the spot by asking any questions about the instructions or the evidence.

Jurors like to know how long each day they will deliberate and whether they will be sequestered. How long you deliberate any day is up to you; you will not be sequestered—that is, you will be free to go home each evening if you deliberate more than one day. You will stay together during the day, including meals.

Finally, if you need to notify anyone about the time you will be here, please notify the court attendant and we will make a phone available to you. Also, if you ever need confirmation of your attendance to keep peace with your employer, the clerk's office will provide you with the appropriate documents.

INSTRUCTION NO. 28.

I am giving you two verdict forms, consisting of four "interrogatories" (questions) on each form. 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 must be signed by your foreman or forewoman.

After deliberating for six hours from 1:10 p.m., excluding meals or recesses outside your jury room, then it is necessary that only seven of you agree upon the answers to the questions. In that case, the verdict must be signed by all seven jurors who agree.

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

Dated this 6th day of December, 2019.


IAN K. THORNHILL, Judge
Sixth Judicial District of Iowa

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