

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION**

**CAROLYN GRAVES as  
Administrator of the Estate of Willie  
Maurice Jones,**

**Plaintiff,**

**vs.**

**CITY OF WATERLOO, IOWA, and  
ALBERT BOVY, in his individual and  
official capacities,**

**Defendant.**

**No. C10-2014**

**FINAL JURY INSTRUCTIONS**

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**FINAL INSTRUCTION NO. 1**

Members of the jury, the instructions I gave at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

Neither in these instructions nor in any ruling, action or remark that I have made during the course of this trial have I intended to give any opinion or suggestion as to what your verdict should be.

**FINAL INSTRUCTION NO. 2**

The fact that the City of Waterloo is a municipal corporation should not affect your decision. All persons are equal before the law, and municipal corporations, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

Since a municipal corporation can act only through its officers, employees, or other agents, any act of an officer, employee, or other agent of the City of Waterloo, in the performance of that person's duties and within the scope of their authority, is held in law to be an act of the City of Waterloo.

An officer, employee, or other agent acts "within the scope of their authority" only when they are engaged in the performance of duties expressly or impliedly assigned to them by the municipal corporation. A municipal corporation is not responsible for acts of its officers, employees, or other agents performed outside the scope of their authority. In this case, the City of Waterloo has stipulated that Bovy was acting within the scope of his authority.

**FINAL INSTRUCTION NO. 3**

In these instructions you are told that your verdict depends on whether you find certain facts have been proved. The burden of proving a fact is upon the party whose claims rely upon that fact. The party who has the burden of proving a fact must prove it by the greater weight or preponderance of the evidence. To prove something by the greater weight or preponderance of the evidence is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable. If, on any issue in the case, the evidence is equally balanced, you cannot find that issue has been proved.

In some instances, you will be instructed that a fact must be proven by "clear, convincing, and satisfactory" evidence. Evidence is clear, convincing, and satisfactory if there is no serious or substantial uncertainty about the conclusion to be drawn from it.

The greater weight or preponderance of the evidence, or whether a fact has been proven by clear and convincing evidence, is not necessarily determined by the greater number of witnesses or exhibits a party has presented.

You may have heard of the term "proof beyond a reasonable doubt." That is a stricter standard which applies in criminal cases. It does not apply in civil cases such as this. You should, therefore, put it out of your minds.

**FINAL INSTRUCTION NO. 4**

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, you may consider a witness' intelligence, the opportunity a witness had to see or hear the things testified about, a witness' memory, any motives a witness may have for testifying a certain way, the manner of a witness while testifying, whether a witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

**FINAL INSTRUCTION NO. 5**

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.

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.

**FINAL INSTRUCTION NO. 6**

Regarding Graves' claim of a violation of constitutional rights, if a police officer fabricates evidence in an effort to wrongfully incriminate a person, then he has violated the person's constitutional rights. To recover on this claim, Graves must prove all of the following propositions:

1. Bovy fabricated evidence of criminal conduct on the part of Jones by placing a bag containing marijuana outside the passenger side of Jones' vehicle; and
2. As a direct result of Bovy's act, Jones was damaged; and
3. The amount of damage.

If Graves has failed to prove any of these propositions, then Graves is not entitled to damages on this claim. If Graves has proved all of these propositions, then Graves is entitled to damages in some amount.

**FINAL INSTRUCTION NO. 7**

Regarding her claim of malicious prosecution, Graves must prove all of the following propositions:

1. Jones was prosecuted in the Iowa District Court for Black Hawk County for the crime of possession of marijuana; and
2. Bovy caused that prosecution by fabricating evidence of criminal conduct on the part of Jones by placing a bag containing marijuana outside the passenger side of Jones' vehicle; and
3. The prosecution ended favorably for Jones; and
4. Bovy acted without probable cause; and
5. Bovy acted with malice; and
6. The prosecution was a cause of Jones' damage; and
7. The amount of damage.

If Graves has failed to prove any of these propositions, then Graves is not entitled to damages on this claim. If Graves has proved all of these propositions, then Graves is entitled to damages in some amount.

**FINAL INSTRUCTION NO. 8**

**Regarding element No. 2 of Instruction No. 7,** you may conclude Bovy caused the prosecution if he fabricated evidence of criminal conduct on the part of Jones by placing a bag containing marijuana outside the passenger side of Jones' vehicle.

**Regarding element No. 4 of Instruction No. 7,** probable cause for filing a criminal charge means having a reasonable ground to file the charge. Probable cause existed if Bovy knew enough about the facts and circumstances and had reasonable trustworthy information, including what someone else told him, so that a reasonable person would believe that Jones was guilty of the crime charged.

Probable cause does not require absolute certainty or proof beyond a reasonable doubt. It is to be determined by the factual and practical considerations of everyday life on which reasonable and careful persons act.

**Regarding element No. 5 of Instruction No. 7,** an act is done "maliciously" when the main reason for doing the act was ill-will, hatred, or some other wrongful motive. The fact that Bovy disliked or felt resentment towards Jones would not in itself constitute malice.

**Regarding element No. 6 of Instruction No. 7,** the conduct of a party is a cause of damages when it is a substantial factor in producing damage and when the damage would not have happened except for the conduct. "Substantial" means the party's conduct has such an effect in producing damage as to lead a reasonable person to regard it as a cause. A particular result may have more than one cause.

**FINAL INSTRUCTION NO. 8A**

You have heard testimony that Jones was found not guilty in the underlying criminal trial. This evidence may be considered by you for the limited purpose of determining whether Graves proved that the prosecution ended favorably for Jones, as required by element No. 3 of Instruction No. 7. It may not be considered for any other purpose. Specifically, you should not speculate regarding what findings were made by the jury, if any, in reaching its verdict.

**FINAL INSTRUCTION NO. 9**

Regarding her claim of intentional infliction of severe emotional distress, Graves must prove all of the following propositions:

1. Outrageous conduct by Bovy; and
2. Bovy intentionally caused emotional distress or acted with reckless disregard of the probability of causing emotional distress by fabricating evidence of criminal conduct on the part of Jones by placing a bag containing marijuana outside the passenger side of Jones' vehicle; and
3. Jones suffered severe or extreme emotional distress; and
4. Bovy's outrageous conduct was a cause of the emotional distress; and
5. The amount of damage.

If Graves has failed to prove any of these propositions, then Graves is not entitled to damages on this claim. If Graves has proved all of these propositions, then Graves is entitled to damages in some amount.

**FINAL INSTRUCTION NO. 10**

**Regarding element No. 1 of Instruction No. 9**, “outrageous conduct” is conduct that is 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.

**Regarding element No. 2 of Instruction No. 9**, 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.

**Regarding element No. 3 of Instruction No. 9**, 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.

**FINAL INSTRUCTION NO. 11**

If you find that Graves is entitled to damages on any of her claims, then you must award her such sum as you find will fairly and justly compensate her for any damages you find Jones sustained as a direct result of Bovy's wrongful conduct.

In doing so, you must consider the following items in determining an amount which will fully compensate the Estate of Willie Maurice Jones for the damages Jones incurred.

1. Mental pain and suffering sustained by Jones from the date of his arrest on February 21, 2008, to the date of his death on September 20, 2010. Mental pain and suffering may include, but is not limited to, mental anguish or loss of enjoyment of life.
2. Expenses and fees incurred as a result of Jones' arrest and prosecution.

The amount you assess for mental pain and suffering 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 Bovy as provided 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.

If you find in favor of Graves on any of her claims, but you do not find the damages have monetary value, then you must return a verdict on that claim for Graves in the nominal amount of One Dollar (\$1.00).

The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

**FINAL INSTRUCTION NO. 11A**

You have heard testimony that Jones was convicted of criminal offenses prior to February 21, 2008. This evidence may be considered by you for the limited purpose of determining Jones' damages, if any. It may not be considered for any other purpose.

**FINAL INSTRUCTION NO. 12**

In addition to compensatory damages mentioned in Instruction No. 11, the law permits the jury under certain circumstances to award punitive damages.

If you find in favor of Graves on any of her claims, and if it has been proved that the conduct of Bovy was malicious or recklessly indifferent to Jones' rights, then you may, but are not required to, award Graves an additional amount as punitive damages for the purposes of punishing Bovy for engaging in such misconduct and deterring Bovy and others from engaging in such misconduct in the future. You should presume that Graves has been made whole for the injuries sustained by Jones by the damages awarded under Instruction No. 11.

If you decide to award punitive damages, you should consider the following in deciding the amount of punitive damages to award:

1. How reprehensible Bovy's conduct was. In this regard, you may consider whether the harm suffered by Jones was physical or economic or both; whether there was deceit, intentional malice, reckless disregard for the rights of Jones; whether Bovy's conduct that harmed Jones also posed a risk of harm to others; whether there was any repetition of the wrongful conduct and past conduct of the sort that harmed Jones.
2. How much harm Bovy's wrongful conduct caused Jones. You may not consider harm to others in deciding the amount of punitive damages to award.
3. What amount of punitive damages, in addition to the other damages already awarded, is needed to punish Bovy for his wrongful conduct toward Jones and to deter Bovy and others from similar wrongful conduct in the future.
4. The amount of any punitive damages award should bear a reasonable relationship to the harm caused to Jones.

You may not award punitive damages against the City of Waterloo.

**FINAL INSTRUCTION NO. 13**

Graves asserts three separate claims for the recovery of damages. Each claim requires Graves to prove that Bovy fabricated evidence of criminal conduct on the part of Jones by placing a bag containing marijuana outside the passenger side of Jones' vehicle. Accordingly, in an effort to simplify the verdict form, you will be asked the question only once, rather than three times. If you find that Bovy fabricated evidence by planting the marijuana, then you will proceed to determine the amount of damages. If you find that Bovy did not place the marijuana near Jones' vehicle, then you will not answer any further questions.

**FINAL INSTRUCTION NO. 14**

In conducting your deliberations and returning your verdict, there are certain rules you must follow.

*First*, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

*Second*, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict must be unanimous.

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 the views of your fellow jurors.

Do not be afraid to change your opinions 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. Remember at all times that you are not partisans. You are judges - judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

*Third*, if you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone - including me - how your votes stand numerically.

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

*Finally*, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when each of you has agreed

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FINAL INSTRUCTION NO. 14 (Cont'd)

on the verdict, your foreperson will fill in the form, sign and date it, and advise the court security officer that you are ready to return to the courtroom.

DATED this 26<sup>th</sup> day of September, 2011.



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JON STUART SCOLES  
UNITED STATES MAGISTRATE JUDGE  
NORTHERN DISTRICT OF IOWA