

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

ALICE MCCABE and CHRISTINE
NELSON,

Plaintiffs,

vs.

MICHELLE MAIS,

Defendant.

No. 05-CV-73-LRR

FINAL JURY INSTRUCTIONS

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

The instructions I am about to give you, as well as the preliminary instructions given to you at the beginning of the trial, are in writing and will be available to you in the jury room. *All* instructions, whenever given and whether in writing or not, must be followed. This is true even though some of the instructions I gave you at the beginning of trial or during trial are not repeated here.

In considering these instructions, the order in which they are given is not important.

INSTRUCTION NO. 1

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 verdicts should be.

INSTRUCTION NO. 2

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's intelligence, the opportunity a witness had to see or hear the things testified about, a witness's 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, a 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.

INSTRUCTION NO. 3

In these instructions you are told that your verdicts depend on whether you find certain facts have been proven. Plaintiffs Alice McCabe and Christine Nelson bear the burden to prove the facts in this case by the greater weight of the evidence. To prove something by the greater weight 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.

The greater weight of the 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.

INSTRUCTION NO. 4

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witnesses to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

INSTRUCTION NO. 5

Certain testimony was read into the record from a prior proceeding. Such testimony was taken under oath before the trial and preserved in writing. Consider that testimony as if it had been given here in court.

INSTRUCTION NO. 6

Each party is entitled to have the case decided solely on the evidence which applies to that party. The liability of Defendant Michelle Mais is separate and distinct from any other individual. You must consider Plaintiffs' claims against Defendant separately. You may not hold Defendant liable for what others did or did not do.

INSTRUCTION NO. 7

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

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's 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

This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth and holding the same or similar stations in life. All persons stand equal before the law and are to be dealt with as equals in a court of law.

INSTRUCTION NO. 10

You are instructed that Defendant unreasonably searched Plaintiffs at the Linn County Jail by subjecting each of them to a strip search and a visual body cavity inspection. You must decide the amount of damages, if any, that each Plaintiff suffered as a result of these unreasonable searches.

INSTRUCTION NO. 11

A strip search is any search during which a law enforcement officer requires a person to remove or arrange some or all of that person's clothing to permit a visual inspection of the person's underclothing, breasts, buttocks or genitals. A visual body cavity search is a search which occurs when the officer visually inspects the person's rectal and vaginal cavities.

INSTRUCTION NO. 12

The conduct of a party is a cause of a particular result when it is a substantial factor in producing the result and the result would not have happened except for the conduct. “Substantial” means the party’s conduct has such an effect in producing the result as to lead a reasonable person to regard it as a cause.

INSTRUCTION NO. 13

You must award each Plaintiff such sum as you find will fairly and justly compensate her for any damages you find she sustained and is reasonably certain to sustain in the future as a result of Defendant's unreasonable searches.

You should consider the following elements of damages:

1. The past pain or suffering the Plaintiff has experienced and is reasonably certain to experience in the future, the nature and extent of the injury, whether the injury is temporary or permanent and any aggravation of a pre-existing condition;
2. The past loss of full mind each Plaintiff experienced and the loss of full mind each Plaintiff will reasonably experience in the future; and
3. The reasonable value of the medical care and supplies reasonably needed by and actually provided to Plaintiff Nelson and reasonably certain to be needed in the future.

Remember, throughout your deliberations, you must not engage in any speculation, guess or conjecture and you must not award damages under this Instruction by way of punishment or through sympathy. Further, you may not award Plaintiffs any amount for abstract value or importance of their constitutional rights.

INSTRUCTION NO. 14

“Past loss of full mind” as used in the Verdict Forms means loss of function of the mind from the date of injury to the present time. Loss of mind is the inability of a particular part of the mind to function in a normal manner.

“Future loss of full mind” as used in the Verdict Forms means the present value of future loss of function of the mind.

“Past pain and suffering” as used in the Verdict Forms means 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.

“Future pain and suffering” as used in the Verdict Forms means the present value of future mental pain and suffering.

“Past medical expenses” as used in the Verdict Forms means the reasonable value of necessary doctor and prescription charges from the date of the injury to the present time.

“Future medical expenses” as used in the Verdict Forms means the present value of reasonable and necessary doctor and prescription charges which will be incurred in the future. The amount you assess for mental pain and suffering in the past and future and loss of function of the mind 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.

INSTRUCTION NO. 15

If you find Plaintiff Nelson had a mood and anxiety disorder before this incident, and you find that this incident aggravated such condition, causing further suffering, then she is entitled to recover damages caused by the aggravation. Likewise, if you find Plaintiff Nelson had a mood and anxiety disorder making her more susceptible to injury than a person in good mental health, then Defendant is responsible for all injuries and damages which are experienced by Plaintiff Nelson proximately caused by Defendant's actions, even though the injuries claimed produce a greater injury than those which might have been experienced by a person in good mental health under the same circumstances.

If you find either Plaintiff suffered emotional damage from her arrest, and you find the strip search and visual body cavity search aggravated any such damage, then such Plaintiff is entitled to recover damages caused by the aggravation.

Neither Plaintiff is entitled to recover for any disability which existed before this incident or for any injuries or damages which she now has which were not caused by Defendant's actions.

INSTRUCTION NO. 16

If the greater weight of the evidence shows that a Plaintiff has been permanently injured, you may consider her life expectancy. A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Plaintiff McCabe is 27.9 years, and the life expectancy of people who are the same age as Plaintiff Nelson is 28.7 years. The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence about Plaintiffs' health, habits, occupation, and lifestyle, when deciding issues of future damages.

INSTRUCTION NO. 17

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. 18

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes, and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

INSTRUCTION NO. 19

In conducting your deliberations and returning your verdicts, there are certain rules you must follow. I shall list those rules for you now.

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 an agreement if you can do so without violence to individual judgment, because verdicts 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.

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INSTRUCTION NO. 19 (cont'd)

Fourth, your answers must be based solely on the evidence and on the law which I have given to you in my instructions. Your answers must be unanimous. Nothing I have said or done is intended to suggest what your answers 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. The answers to the questions in the Verdict Forms must be the unanimous decisions of the jury. You will take the Verdict Forms to the jury room, and when you have completed your deliberations and each of you has agreed on the answers to the Verdict Forms, your foreperson will fill out the forms, and sign and date them. The foreperson must bring the signed Verdict Forms to the courtroom when it is time to announce your decisions. When you have reached your decisions, the foreperson will advise the Court Security Officer that you are ready to return to the courtroom.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return such verdicts as accord with the evidence and these instructions.

DATED this 29th day of October, 2008.



LINDA R. READE, CHIEF JUDGE
U.S. DISTRICT COURT