

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

WILLIAM THOMPSON,

Plaintiff,

v.

SAM FINNEGAN,

Defendant.

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3:08-cv-309

COURT'S FINAL JURY INSTRUCTIONS

Date: May 23, 2011 /s/ Philip P. Simon
Philip P. Simon, Chief Judge
United States District Court

FINAL INSTRUCTION NO. 1

Members of the jury, you have seen and heard all the evidence and arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

FINAL INSTRUCTION NO. 2

The evidence consists of the testimony of the witnesses and the exhibits admitted in evidence.

FINAL INSTRUCTION NO. 3

Certain things are not to be considered as evidence. I will list them for you:

First, if I told you to disregard any testimony or exhibits or struck any testimony or exhibits from the record, such testimony or exhibits are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, Internet or television reports you may have seen or heard. Such reports are not evidence and your verdict must not be influenced in any way by such publicity.

Third, questions and objections or comments by the lawyers are not evidence. Lawyers have a duty to object when they believe a question is improper. You should not be influenced by any objection, and you should not infer from my rulings that I have any view as to how you should decide the case.

Fourth, the lawyers' opening statements and closing arguments to you are not evidence. Their purpose is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

FINAL INSTRUCTION NO. 4

In determining whether any fact has been proved, you should consider all of the evidence bearing on the question regardless of who introduced it.

FINAL INSTRUCTION NO. 5

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this “inference.” A jury is allowed to make reasonable inferences. Any inference you make must be reasonable and must be based on the evidence in the case.

FINAL INSTRUCTION NO. 6

You may have heard the phrases “direct evidence” and “circumstantial evidence.” Direct evidence is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact. Circumstantial evidence is proof of a fact, or a series of facts, that tends to show that some other fact is true.

As an example, direct evidence that it is raining is testimony from a witness who says, “I was outside a minute ago and I saw it raining.” Circumstantial evidence that it is raining is the observation of someone entering a room carrying a wet umbrella.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should decide how much weight to give to any evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

FINAL INSTRUCTION NO. 7

You must decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also must decide what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, including any party to the case, you may consider, among other things:

- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- any interest, bias, or prejudice the witness may have;
- the witness's intelligence;
- the manner of the witness while testifying;
- the witness's age; and
- the reasonableness of the witness's testimony in light of all the evidence in the case.

FINAL INSTRUCTION NO. 8

You may consider statements given by a party under oath before trial as evidence of the truth of what he said in the earlier statements, as well as in deciding what weight to give his testimony.

In considering prior inconsistent statements or conduct, you should consider whether it was simply an innocent error or an intentional falsehood and whether it concerns an important fact or an unimportant detail.

FINAL INSTRUCTION NO. 9

You have heard evidence that William Thompson has been previously convicted of crimes within the last ten years. You may consider this evidence only in deciding whether William Thompson's testimony is truthful in whole, in part, or not at all. You may not consider this evidence for any other purpose.

FINAL INSTRUCTION NO. 10

The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.

FINAL INSTRUCTION NO. 11

William Thompson claims that Sam Finnegan caused him to be falsely arrested on April 28, 2007. To succeed on this claim, William Thompson must prove by a preponderance of the evidence:

1. That Sam Finnegan caused William Thompson to be arrested; and
2. That Sam Finnegan did not have probable cause to have him arrested.

If you find that William Thompson has proved each of these things by a preponderance of the evidence, then you should find for him and go on to consider the question of damages.

If, on the other hand, you find that William Thompson has failed to prove any of these things by a preponderance of the evidence, then you should find for Sam Finnegan on this claim.

FINAL INSTRUCTION NO. 12

When I say a particular party must prove something by “a preponderance of the evidence,” or when I use the expression “if you find” or “if you decide,” this is what I mean: When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

FINAL INSTRUCTION NO. 13

Let me explain what "probable cause" means. There is probable cause for an arrest if at the moment the arrest was made, a prudent person would have believed that William Thompson had committed or was committing a crime. In making this decision, you should consider what Sam Finnegan knew or what reasonably trustworthy information Sam Finnegan had received.

Probable cause requires more than just a suspicion. But it does not need to be based on evidence that would be sufficient to support a conviction, or even a showing that Sam Finnegan's belief was probably right.

FINAL INSTRUCTION NO. 14

You are instructed that as of April 28, 2007, there was in full force and effect a statute of the State of Indiana which provided, in relevant part, as follows:

A person who operates a motor vehicle after the person's driving privileges are forfeited for life ... commits a Class C felony.

FINAL INSTRUCTION NO. 15

You have heard evidence that the charges brought against William Thompson in connection with his arrest on April 28, 2007 were eventually dismissed. The fact that the charges against William Thompson were later dismissed is not relevant to whether Sam Finnegan had probable cause to arrest William Thompson.

FINAL INSTRUCTION NO. 16

If there was probable cause, Sam Finnegan did not need to do more investigation to uncover evidence that William Thompson was innocent.

FINAL INSTRUCTION NO. 17

If you find that William Thompson has proved his claim against Sam Finnegan, then you must determine what amount of damages, if any, William Thompson is entitled to recover.

If you find that William Thompson has failed to prove his claims, then you will not consider the question of damages.

FINAL INSTRUCTION NO. 18

If you find in favor of William Thompson, then you must determine the amount of money that will fairly compensate William Thompson for any injury that you find he sustained and is reasonably certain to sustain in the future as a direct result of his false arrest.

William Thompson must prove his damages by a preponderance of the evidence. Your award must be based on evidence and not speculation or guesswork. This does not mean, however, that damages are restricted to the actual loss of money; they include both the physical and mental aspects of injury, even if they are not easy to measure.

You should consider the following types of damages, and no others:

The physical and mental/emotional pain and suffering that William Thompson has experienced and is reasonably certain to experience in the future. No evidence of the dollar value of physical or mental/emotional pain and suffering has been or needs to be introduced. There is no exact standard for setting the damages to be awarded on account of pain and suffering. You are to determine an amount that will fairly compensate William Thompson for the injury he has sustained.

If you find in favor of William Thompson but find that he has failed to prove damages, you must return a verdict for him in the amount of one dollar (\$1.00).

FINAL INSTRUCTION NO. 19

Upon retiring to the jury room, you must select a presiding juror. The presiding juror will preside over your deliberations and will be your representative here in court.

A form of verdict have been prepared for you. Take this form to the jury room, and when you have reached unanimous agreement on the verdict, your presiding juror will fill in and date the appropriate form, and all of you will sign it.

FINAL INSTRUCTION NO. 20

I do not anticipate that you will need to communicate with me. If you do need to communicate with me, the only proper way is in writing. The writing must be signed by the presiding juror, or, if he or she is unwilling to do so, by some other juror. The writing should be given to the marshal, who will give it to me. I will respond either in writing or by having you return to the courtroom so that I can respond orally.

If you do communicate with me, you should not indicate in your note what your numerical division is, if any.

FINAL INSTRUCTION NO. 21

The verdict must represent the considered judgment of each juror. Your verdict, whether for or against the parties, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to reexamine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of other jurors or for the purpose of returning a unanimous verdict.

All of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror. You are impartial judges of the facts.