

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

CENTRAL DIVISION

MICHAEL L. COUCH,

Plaintiff,

-vs.-

DALE BOHN,

Defendant.

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CIV. 12-3029-RAL

FINAL JURY INSTRUCTIONS

FINAL INSTRUCTION NO. 1

Members of the jury, the instructions I gave you at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions. The instructions I am about to give you now are in writing and will be available to you in the jury room.

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.

All instructions, whenever given and whether in writing or not, must be followed.

FINAL INSTRUCTION NO. 2

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

Neither these instructions nor any of my rulings, actions, or remarks are intended to suggest what your verdict should be.

FINAL INSTRUCTION NO. 3

I have mentioned the word "evidence." The "evidence" in this case consists of the testimony of witnesses, the documents and other things received as exhibits, and the facts that have been stipulated—this is, formally agreed to by the parties.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions and comments by lawyers representing the parties in the case are not evidence.

2. Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.

3. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.

4. Anything you saw or heard about this case outside the courtroom is not evidence.

Finally, if you were instructed that some evidence was received for a limited purpose only, you must follow that instruction.

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, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that 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.

You should judge the testimony of the parties in the lawsuit in the same manner as you judge the testimony of the other witnesses.

FINAL INSTRUCTION NO. 5

The credibility of a witness may be attacked by introducing evidence that on some former occasion the witness made a statement or acted in a manner inconsistent with the witness's testimony in this case on a matter material to the issues. You may consider evidence of this kind in connection with all the other facts and circumstances in evidence in deciding the weight to give the testimony of that witness.

FINAL INSTRUCTION NO. 6

Plaintiff Couch claims to have been injured and sustained damages as a legal result of the negligence of defendant Bohn in one or more of the following respects.

Plaintiff Couch claims that defendant Bohn shot too low to the horizon, shot out of his shooting lane, and fired his shotgun in the direction of a person within the range of fire.

Defendant Bohn denies plaintiff Couch's allegations and holds plaintiff Couch to his burden of proof. Defendant Bohn also alleges that plaintiff Couch assumed the specific risk of injury from being shot by a fellow hunter during a hunting trip.

FINAL INSTRUCTION NO. 7

In civil actions, the party who has the burden of proving an issue must prove that issue by greater convincing force of the evidence.

Greater convincing force means that after weighing the evidence on both sides there is enough evidence to convince you that something is more likely true than not true. In the event that the evidence is evenly balanced so that you are unable to say that the evidence on either side of an issue has the greater convincing force, then your finding upon that issue must be against the party who has the burden of proving it. In this action, plaintiff has the burden of proving the following issues:

1. That defendant Bohn was negligent;
2. That the negligence of defendant Bohn was the legal cause of plaintiff Couch's injuries; and
3. The amount of damages to plaintiff Couch legally caused by the negligence of defendant Bohn.

The defendant has the burden of proving this issue:

1. That plaintiff Couch assumed the risk of injury.

In determining whether an issue has been proved by greater convincing force of the evidence, you should consider all of the evidence bearing upon that issue, regardless of who produced it.

FINAL INSTRUCTION NO. 8

Negligence is the failure to use reasonable care. It is the doing of something which a reasonable person would not do, or the failure to do something which a reasonable person would do, under facts similar to those shown by the evidence.

FINAL INSTRUCTION NO. 9

A legal cause is a cause that produces a result in a natural and probable sequence, and without which the result would not have occurred.

A legal cause does not need to be the only cause of a result. A legal cause may act in combination with other causes to produce a result.

FINAL INSTRUCTION NO. 10

If a person assumes the risk of injury or damage, the person is not entitled to any recovery. To establish an assumption of the risk defense, the defendant must show:

- (1) that the plaintiff had actual or constructive knowledge of the existence of the specific risk involved; and
- (2) that the plaintiff appreciated the risk's character; and
- (3) that the plaintiff voluntarily accepted the risk, having had the time, knowledge, and experience to make an intelligent choice.

FINAL INSTRUCTION NO. 11

A person who is exercising ordinary care has a right to assume that others will perform their duty and obey the law. Unless there is reasonable cause for thinking otherwise, people can assume that they are not exposed to danger from another person's violation of the law or duty of care.

FINAL INSTRUCTION NO. 12

If you decide for the plaintiff on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate the plaintiff for any of the following elements of loss or harm suffered in person and proved by the evidence to have been legally caused by the defendant's conduct, taking into consideration the nature, extent, and duration of the injury, whether such loss or harm could have been anticipated or not, namely:

- (1) The disability and disfigurement;
- (2) The pain and suffering, mental anguish, and loss of capacity of the enjoyment of life experienced in the past and reasonably certain to be experienced in the future as a result of the injury; and
- (3) The reasonable value of necessary medical care, treatment, and services received.

Whether any of these elements of damages have been proved by the evidence is for you to determine. Your verdict must be based on evidence and not upon speculation, guesswork, or conjecture.

FINAL INSTRUCTION NO. 13

The issues to be determined by you in this case are these:

First, was defendant Bohn negligent?

If you find the defendant was not negligent, you will return a verdict for the defendant. If you find the defendant was negligent, you will have a second issue to determine, namely:

Second, did plaintiff Couch assume the specific risk of this injury and damage?

If you find that the plaintiff assumed the risk, you will return a verdict for the defendant. If you find the plaintiff did not assume the risk, you will have a third issue to determine, namely:

Third, was defendant Bohn's negligence a legal cause of any injury to plaintiff Couch?

If you find defendant Bohn's negligence was not a legal cause of plaintiff Couch's injury, the plaintiff is not entitled to recover and you will return a verdict for the defendant. If you find that the defendant's negligence was a legal cause of plaintiff's injury, you will then determine the amount of damages that the plaintiff is entitled to recover and return a verdict for the plaintiff in the amount thereof.

You should first determine the questions of liability before you consider the question of damages.

FINAL INSTRUCTION NO. 14

In conducting your deliberations and returning your verdict, 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 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.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or bailiff, 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, during your deliberations, you must not communicate with or provide any information to anyone other than by note to me by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone, Blackberry or computer; the internet, any internet service, or any text or instant messaging service; or any internet chat room, blog, or website such as Facebook, My Space, LinkedIn, YouTube or Twitter, to communicate to anyone information about this case or to conduct any research about this case until I accept your verdict.

Fifth, 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 on the verdict, your foreperson will fill in the form, sign and date it, and advise the marshal or bailiff that you are ready to return to the courtroom. If your verdict is for the plaintiff, use the verdict form entitled VERDICT FORM FOR THE PLAINTIFF. If your verdict is for the defendant, use the verdict form entitled VERDICT FORM FOR THE DEFENDANT.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

MICHAEL L. COUCH,

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12-3029-RAL

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Plaintiff,

*

-vs.-

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VERDICT FORM FOR THE PLAINTIFF

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DALE BOHN,

*

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Defendant.

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We, the jury, duly empaneled and sworn to try the issues in this case, do hereby find in favor of the plaintiff and assess the plaintiff's damages as follows:

For past medical expenses: \$ _____

For all other elements of damages \$ _____

Dated July ____, 2014

Foreperson

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

MICHAEL L. COUCH,

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12-3029-RAL

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Plaintiff,

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-vs.-

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VERDICT FORM FOR THE DEFENDANT

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DALE BOHN,

*

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Defendant.

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We, the jury, duly empaneled and sworn to try the issues in this case, do hereby find in favor of the defendant.

Dated July ____, 2014

Foreperson