

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

CODY R. WIENTJES,

Plaintiff,

vs.

WAYNE KANYUH,

Defendant.

1:17-CV-1005-CBK

JURY INSTRUCTIONS

INSTRUCTION NO. 1

Ladies and gentlemen of the jury, it is my duty now to explain the rules of law you must apply to this case.

You as jurors are the sole judges of the facts. But it is your duty to follow the law stated in these instructions, and to apply that law to the facts as you find them from the evidence before you. It would be a violation of your sworn duty to base your verdict upon any rules of law other than the ones given you in these instructions, regardless of your personal feelings as to what the law ought to be.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

INSTRUCTION NO. 2

You have been chosen and sworn as jurors to try the issues of fact presented in this case. You are to perform this duty without bias or prejudice, because the law does not permit jurors to be governed by sympathy or public opinion. The parties and the public expect that you will carefully and impartially consider all of the evidence and will follow the law as stated by the Court, in order to reach a just verdict, regardless of the consequences to any party.

INSTRUCTION NO. 3

This is a civil action. The plaintiff seeks to recover monetary damages from the defendant.

Plaintiff claims that the defendant was negligent and such negligence was a proximate cause of a collision, resulting in financial loss to the plaintiff. Defendant denies that he was negligent, denies that any negligence on his part caused damages to plaintiff, claims that plaintiff was contributorily negligent, and claims that plaintiff failed to mitigate his damages, if any.

These claims by the parties form the issues of fact to be determined by you from the evidence received during the trial under the law applicable to this case as stated in these instructions.

INSTRUCTION NO. 4

I have mentioned the word “evidence.” The evidence in this case consists of the testimony of witnesses and the documents and other things received as exhibits.

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 any objection to a question or an exhibit, you must ignore the question or the exhibit and must not try to guess what the answer or information may have been.
3. Testimony and questions that I struck from the record, or told you to disregard, are not evidence and must not be considered.
4. Anything you saw or heard about this case outside the courtroom is not evidence.

INSTRUCTION NO. 5

There are two types of evidence from which you may find the truth as to the facts of a case--direct evidence and circumstantial evidence. Direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness; circumstantial evidence is proof of a chain of facts and circumstances indicating the liability or non-liability of a party. The law makes no distinction between the weight to be given to either direct evidence or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case.

INSTRUCTION NO. 6

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.

INSTRUCTION NO. 7

During the trial, certain evidence was presented to you by depositions. The witnesses testified under oath at the depositions, just as if the witnesses were in court, and you should consider this testimony together with all other evidence received.

INSTRUCTION NO. 8

You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education, or experience, have become expert in some field may state their opinions on matters in that field and may also state the reasons for their opinions.

Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.

INSTRUCTION NO. 9

In civil actions, the party who has the burden of proving an issue, must prove that issue by the greater convincing weight of the evidence. “Greater convincing weight” 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 the evidence is evenly balanced so that you are unable to say the evidence on either side of an issue has the greater weight, then your finding upon the issue must be against the party who has the burden of proving it.

In this action, the plaintiff has the burden of proving the following issues:

First, that the defendant was negligent;

Second, that defendant’s negligence was a legal cause of plaintiff’s injuries; and

Third, the amount, if any, of plaintiff’s damages that were legally caused by defendant’s negligence.

The defendant has the burden of proving the following issues:

First, that plaintiff was contributorily negligent;

Second, that plaintiff’s contributory negligence was a legal cause of his damages, and

Third, that plaintiff failed to mitigate his damages.

In determining whether or not an issue has been proven by the greater convincing weight of the evidence, you should consider all of the evidence bearing upon that issue, regardless of who produced it.

You have heard in criminal cases 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. 10

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

First, was the defendant negligent?

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

Was that negligence a legal cause of any injury to the plaintiff?

If you find defendant's negligence was not a legal cause of plaintiff's injury, plaintiff is not entitled to recover damages and you must return a verdict for the defendant. If you find the defendant's negligence was a legal cause of plaintiff's injury, you must determine a third issue, namely:

Was the plaintiff also negligent?

If you find that the plaintiff was not negligent, you then must determine the amount of plaintiff's damages and return a verdict for the plaintiff.

If you find that the plaintiff was also negligent, you then must determine a fourth issue, namely:

Was the plaintiff's own negligence also a legal cause of his injury?

If you find that the plaintiff's own negligence was not a legal cause of plaintiff's injury, you then must determine the amount of plaintiff's damages and return a verdict for the plaintiff.

If you find that the plaintiff's own negligence contributed as a legal cause of his injury, you have a fifth issue to determine. The plaintiff may still recover if you find that such contributory negligence of the plaintiff was slight or less than slight, when compared to the negligence of the defendant; but the damages the plaintiff may recover must be reduced in proportion to the amount of plaintiff's contributory negligence. If you find that the contributory negligence of the plaintiff is more than slight in comparison with the negligence of the defendant, the plaintiff cannot recover and you must return a verdict for the defendant.

INSTRUCTION NO. 11

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

A legal cause does not need to be the only cause of the harmful result. A legal cause may act in combination with other causes to produce the harmful result. It is sufficient if it concurs with some other cause acting at the same time, which in combination with it causes the harmful result. However, for legal cause to exist, you must find that the conduct complained of was a substantial factor in bringing about the harmful result.

Liability cannot be based on mere speculative possibilities or circumstances and conditions remotely connected to the events leading up to the harmful result. A party's conduct must have had such an effect in producing the harmful result as to lead reasonable people to regard it as a cause of the harmful result.

INSTRUCTION NO. 12

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. The law does not say how a reasonable person would act under facts similar to those shown by the evidence. That is for you to decide.

INSTRUCTION NO. 13

Contributory negligence is negligence on the part of a plaintiff which, when combined with the negligence of a defendant, contributes as a legal cause in bringing about the injury to the plaintiff.

INSTRUCTION NO. 14

A plaintiff who is contributorily negligent may still recover damages if that contributory negligence is slight, or less than slight, when compared with the negligence of the defendant. The term “slight” means small when compared with the negligence of the defendant.

In determining this issue you must determine the answer to two questions:

1. Whether both the plaintiff and the defendant were negligent; and
2. If both were negligent, whether the plaintiff’s negligence was
 - (a) “slight” or less than “slight,” or
 - (b) more than “slight” in comparison with the defendant’s negligence.

In answering the second question you must make a direct comparison between the conduct of the plaintiff and the defendant.

If you find the plaintiff’s contributory negligence is more than slight when compared with the negligence of the defendant, then the plaintiff is not entitled to recover any damages.

If you find the plaintiff’s contributory negligence is slight, or less than slight, when compared with the negligence of the defendant, then the plaintiff is entitled to recover damages. However, the plaintiff’s damages must be reduced in proportion with the amount of the plaintiff’s contributory negligence.

INSTRUCTION NO. 15

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.

A person has a further right to rely and act on that presumption. However, this right does not exist when a person perceives or, in the exercise of ordinary care should perceive that others are not going to perform their duty. One is not justified in ignoring obvious danger even though it is created by another's misconduct.

INSTRUCTION NO. 16

The driver of a vehicle using a public highway has a duty to exercise ordinary care at all times to avoid placing the driver or others in danger and to exercise ordinary care to avoid an accident.

While a driver may assume that others will exercise due care and obey the law, a driver may not for that reason omit any care which the law demands. Any person driving on a public highway is required to anticipate the presence on the highway of other persons, vehicles, and objects.

INSTRUCTION NO. 17

A person operating a vehicle on a public highway has a duty to exercise reasonable care under the circumstances to keep a lookout for other users of the highway and to maintain control of the vehicle so as to be able to stop the vehicle or otherwise avoid an accident within that person's range of vision.

INSTRUCTION NO. 18

A driver may be considered negligent in the operation of a motor vehicle even though the driver was driving within the speed limit if the speed was greater than was reasonable and prudent under the conditions.

INSTRUCTION NO. 19

A statute in this state provides:

No person may drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

This statute sets the standard of care of a reasonable person. If you decide the defendant violated it, such violation is negligence.

INSTRUCTION NO. 20

If you decide for the plaintiff on the question of liability of the defendant and that the plaintiff was not contributorily negligent, 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 or property 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. Physical injury,
2. Lost earnings, if any, from the date of injury until the date of trial,
3. Pain and suffering, mental anguish, and loss of the enjoyment of life experienced in the past,
4. The reasonable expense of necessary repairs to plaintiff's semi-truck and the value of its use during the reasonable time of repair, and
5. The reasonable value of necessary health care, treatment, and services received.

Whether any of the 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.

INSTRUCTION NO. 21

Damages for negligence, if allowed, should be adequate to fairly compensate the other party for all the detriment proximately caused by the acts or omissions of anyone you find to be at fault, whether or not the detriment could have been anticipated. Damages in all cases must be reasonable.

INSTRUCTION NO. 22

A proximate cause is a cause which, in natural and continuous sequence, produces the injury, and without which, the injury would not have occurred. It is a cause which had a substantial part in bringing about the injury either immediately or through events which follow one another.

There may be more than one proximate cause of the injury. The fault of two or more persons may contribute to cause the injury, and in such case, each person's fault is regarded as a proximate cause.

INSTRUCTION NO. 23

If you find that plaintiff had an injury or condition prior to the conduct of the defendant at issue in this case, you may not award damages for any previous or subsequent injuries or conditions unrelated to the defendant's conduct.

Claims for damages for health care expenses and claims for physical injuries or problems claimed to have been caused by an accident cannot be awarded unless the expenses and the described physical problems are supported by an expert opinion based on reasonable probability that the bills are reasonable and customary and that the claimed injuries and problems were caused or aggravated by the accident.

INSTRUCTION NO. 24

In determining the amount of money which will reasonably and fairly compensate the plaintiff, you are instructed that a person who suffers personal injury, damage to property, or damage to business must exercise reasonable care to avoid further injury that could be prevented by the exercise of reasonable care after the injury occurred.

Plaintiff cannot recover for personal injury which could have been avoided by the exercise of reasonable care. Plaintiff cannot recover money for damage to property or damage to business which could have been avoided by the exercise of reasonable diligence and effort.

INSTRUCTION NO. 25

You have been instructed on the subject of the measure of damages in this case because it is my duty to instruct you as to all of the law that may become pertinent to your deliberations. The fact that you have been instructed on the subject of damages must not be considered as intimating any view of my own on the issue of liability or as to which party is entitled to your verdict.

INSTRUCTION NO. 26

Upon retiring to the jury room, you will select one of your number to act as your foreperson. The foreperson will preside over your deliberations and will be your spokesperson here in Court.

A special verdict form has been prepared for your convenience. You will take this form to the jury room and, when you have reached unanimous agreement as to your verdict, you will have your foreperson fill in, date and sign the form to state the verdict upon which you unanimously agree, and then return with your verdict form to the courtroom.

Do not give the verdict form to the Marshal. The foreperson should retain the form until the Clerk gives it to me in open court.

You will be required to provide written answers to certain questions on the verdict form. The questions are to be answered with a "Yes" or a "No" or other brief answer. When all the jurors have agreed to all of the answers to the questions (other than the ones that are immaterial), that will be the verdict of the jury. The foreperson will write the answers of the jury in the space provided under the question. You will refrain from answering any question that has become no longer relevant because of your answer to a previous question.

INSTRUCTION NO. 27

The verdict must represent the considered judgment of each juror. In order to return any verdict, it is necessary that each juror agree thereto. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for himself or herself, but do so only after an impartial consideration of the evidence in the case with the other jurors. In the course of your deliberations, do not hesitate to re-examine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence, solely because of the opinion of the other jurors, or for the mere purpose of returning a verdict.

Remember at all times, 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.

INSTRUCTION NO. 28

If you have questions, you may send a note by a marshal, signed by your foreperson, or by one or more members of the jury.

You will note from the oath about to be taken by the marshal that he, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Bear in mind also that you are never to reveal to any person--not even to the Court--how the jury stands, numerically or otherwise, on any question on the verdict form until after you have reached a unanimous verdict.

INSTRUCTION NO. 29

It is proper to add a final caution.

Nothing that I have said in these instructions -- and nothing that I have said or done during the trial -- has been said or done to suggest to you what I think your verdict should be.

What the verdict shall be is your exclusive duty and responsibility.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

CODY R. WIENTJES Plaintiff, vs. WAYNE KANYUH, Defendants.	1:17-CV-1005-CBK SPECIAL VERDICT
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We the jury, duly impaneled in the above-entitled action and sworn to try the issues therein, find the following:

1. Was defendant Wayne Kanyuh negligent?

_____ No _____ Yes

If you answered "No" in Question 1, you should proceed no further. The foreperson should sign and date this verdict form.

If, and only if, you answered "Yes" in Question 1, proceed to Question 2.

2. Was the negligence of defendant Wayne Kanyuh a legal cause of any injury to plaintiff Cody Wientjes?

_____ No _____ Yes

If you answered "No" in Question 2, you should proceed no further. The foreperson should sign and date this verdict form.

If, and only if, you answered "Yes" in Question 2, proceed to Question 3.

3. Was plaintiff Cody Wientjes also negligent?

_____ No _____ Yes

If you answered "No" in Question 3, you should skip Questions 4 and 5 and proceed to answer Question 6.

If, and only if, you answered "Yes" in Question 3, proceed to Question 4.

4. Was plaintiff Cody Wientjes' negligence also a legal cause of his injury?
_____ No _____ Yes

If you answered "No" in Question 4, you should skip Question 5 and proceed to answer Question 6.

If, and only if, you answered "Yes" in Question 4, proceed to Question 5.

5. Was plaintiff Cody Wientjes' negligence more than slight?
_____ No _____ Yes

If you answered "Yes" to Question 5, you should proceed no further. The foreperson should sign and date this verdict form.

If, and only if, you answered "No" to Question 5, proceed to Question 6.

6. What are the damages, if any, that you find that plaintiff Cody Wientjes is entitled to recover for the following elements of loss?

\$ _____ for the physical injury experienced by plaintiff.

\$ _____ for the pain, suffering, mental anguish and loss of enjoyment of life experienced by plaintiff.

\$ _____ for damage to plaintiff's property.

\$ _____ for the loss of business income.

\$ _____ for health care expenses.

Dated this _____ day of May, 2019.

FOREPERSON