

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

JONAH LONG,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:13-cv-01619-JMS-DKL
)	
MATTHEW KINKADE,)	
)	
Defendant.)	

COURT’S PROPOSED FINAL INSTRUCTIONS

Members of the jury, the preliminary instructions I gave you at the beginning of the trial remain in effect. I now am going to read the final jury instructions. It is your duty to follow all of the instructions. You must not single out some instructions and ignore others because all are important.

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 the Court's instructions, even if you disagree with them.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice, fear or public opinion to influence you.

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, Jonah Long, Matthew Kinkade, Dale Young, Jesus Soria, Jeremy Ingram, Ryan Graber, and Travis Cline, the exhibits admitted in evidence and stipulations.

A stipulation is an agreement between both sides that certain facts are true.

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.

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

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. 5

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. 6

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. 7

You have heard evidence that Jonah Long has been convicted of a crime. You may consider this evidence only in deciding whether Jonah Long'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. 8

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' memory;
- any interest, bias, or prejudice the witness may have;
- the witness' intelligence;
- the manner of the witness while testifying; and
- the reasonableness of the witness' testimony in light of all the evidence in the case.

Final Instruction No. 9

Any notes you have taken during this trial are only aids to your memory. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about the testimony.

Final Instruction No. 10

Matthew Kinkade is being sued as an individual. Neither the state nor any municipality or police department is a party to this lawsuit.

Final Instruction No. 11

Plaintiff Jonah Long filed this lawsuit against Defendant Matthew Kinkade. He has sued under 42 U.S.C. § 1983. This statute is a federal law that allows recovery when a citizen's constitutional right to be free of unreasonable searches is violated. You should focus on whether Jonah Long's right to be free from unreasonable searches was violated and whether Matthew Kinkade intentionally conducted an illegal search unreasonably.

Generally, a police officer must obtain a warrant before searching a house. However, a police officer does not need a warrant to search if the officer obtains voluntary consent from: 1) the individual whose property is to be searched, 2) from a third party possessing common authority or joint control over the premises, or 3) from an individual with the apparent authority to consent to the search.

Once an officer has consent to search from a person with common authority over a house, he may reasonably and lawfully conduct a search of the house within the scope of the consent given. However, when a second person with common authority over the house is physically present when the first person gives consent and the second person expressly objects to the search of the house, an officer may not search the home based on the first person's consent and must instead obtain a warrant.

Under the law then, a warrantless search of a shared dwelling over the express refusal of consent or objection by a physically present resident is not reasonable as to the objecting resident on the basis of consent given to an officer by another occupant.

Final Instruction No. 12

To succeed on his claim against Matthew Kinkade, Jonah Long must prove each of the following:

1. Matthew Kinkade intentionally;
2. searched Jonah Long's house for evidence;
3. without a warrant; and
4. the search was conducted by Matthew Kinkade over Jonah Long's express objection to the search.

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

However, if you find that Jonah Long has failed to prove any one of these things by a preponderance of the evidence, then you should find for Matthew Kinkade, and you will not consider the question of damages.

Final Instruction No. 13

An act is done intentionally if it is done knowingly, that is if it is done voluntarily and deliberately and not because of mistake, accident, negligence, or other innocent reason.

Final Instruction No. 14

Jonah Long has sued Matthew Kinkade on the claim of illegal search of his residence. In order to hold him liable for the illegal search, Jonah Long must show, by a preponderance of the evidence, that Matthew Kinkade personally committed an act that violated Jonah Long's right to be free from an unreasonable search of his residence.

You may not hold Matthew Kinkade liable for what other officers did or did not do.

Final Instruction No. 15

A law enforcement officer who participates in a warrantless search of a home is not liable to a plaintiff for his participation in the search if the officer acted in reasonable reliance on his good faith belief that a fellow officer obtained consent to search the home.

Final Instruction No. 16

If you find that Jonah Long has proved his claim against Matthew Kinkade, then you must determine what amount of damages, if any, Jonah Long is entitled to recover.

If you find that Jonah Long has failed to prove his claim, then you will not consider the question of damages.

Final Instruction No. 17

If you find in favor of Jonah Long, you must award \$1 from Matthew Kinkade.

Final Instruction No. 18

If you find for Jonah Long, you may, but are not required to, assess punitive damages against Matthew Kinkade. The purposes of punitive damages are to punish a defendant for his conduct and to serve as an example or warning to Matthew Kinkade and others not to engage in similar conduct in the future.

Jonah Long must prove by a preponderance of the evidence that punitive damages should be assessed against Matthew Kinkade. You may assess punitive damages only if you find that Matthew Kinkade's conduct was malicious or in reckless disregard of Jonah Long's rights. Conduct is malicious if it is accompanied by ill will or spite, or is done for the purpose of injuring Jonah Long. Conduct is in reckless disregard of Jonah Long's rights if, under the circumstances, it reflects complete indifference to Jonah Long's rights.

If you find that punitive damages are appropriate, then you must use sound reason in setting the amount of those damages. Punitive damages, if any, should be in an amount sufficient to fulfill the purposes that I have described to you, but should not reflect bias, prejudice, or sympathy toward either/any party. In determining the amount of any punitive damages, you should consider the following factors:

- the reprehensibility of Matthew Kinkade's conduct;
- the impact of Matthew Kinkade's conduct on Jonah Long;
- the relationship between Jonah Long and Matthew Kinkade;
- the likelihood that Matthew Kinkade would repeat the conduct if an award of punitive damages is not made;
- Matthew Kinkade's financial condition; and
- the relationship of any award of punitive damages to the amount of actual harm Jonah Long suffered.

Final Instruction No. 19

It is proper for a lawyer to meet with any witness in preparation for trial.

Final Instruction No. 20

The verdicts must represent the considered judgment of each juror. Your verdicts, whether for or against a particular party, 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 re-examine 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.

Final Instruction No. 21

Upon retiring to the jury room, select one of your members as your presiding juror. The presiding juror will preside over your deliberations and will be your representative here in court.

A verdict form has been prepared for you.

Take the form to the jury room, and when you have reached unanimous agreement on the verdict, your presiding juror will fill in the verdict form and date it.

When you wish to return your verdict, notify the bailiff in writing.

Final Instruction No. 22

Once you start deliberating, do not communicate about the case or your deliberations with anyone except other members of your jury. You may not communicate with others about the case or your deliberations by any means. This includes oral or written communication, as well as any electronic method of communication, such as telephone, cell phone, computer, text messaging, instant messaging, chat rooms, blogs, websites, or services like Facebook, MySpace, LinkedIn, YouTube, Twitter, or any other method of communication.

If you need to communicate with me while you are deliberating, send a note through the bailiff. The note should be signed by the presiding juror, or by one or more members of the jury. To have a complete record of this trial, it is important that you do not communicate with me except by a written note. I may have to talk to the lawyers about your message, so it may take me some time to get back to you. You may continue your deliberations while you wait for my answer. Often the Court cannot answer a question except by re-reading the jury instructions, so you may find an answer to any question you have in the instructions. Please be advised that transcripts of trial testimony are not available to you. You must rely on your collective memory of the testimony.

If you send me a message, do not include the breakdown of any votes you may have conducted. In other words, do not tell me that you are split 4–4, or 6–2, or whatever your vote happens to be.