

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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JARVIS ROBINSON, individually )  
and on behalf of the heirs at )  
law of JEFFREY ROBINSON, )  
deceased, )  
 )  
Plaintiff, )  
 )  
v. ) No. 02-2878  
 )  
MARK LUCAS, ANTHONY BERRYHILL, )  
JEFFREY SIMCOX, and ALBERT )  
BONNER, )  
 )  
Defendants. )

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JURY INSTRUCTIONS

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Ladies and gentleman of the jury, we have now come to the point in the case when it is my duty to instruct you in the law that applies to the case and you must follow the law as I state it to you.

As jurors it is your exclusive duty to decide all questions of fact submitted to you and for that purpose to determine the effect and value of the evidence.

You must not be influenced by sympathy, bias, prejudice or passion.

You are not to single out any particular part of the instructions and ignore the rest, but you are to consider all the instructions as a whole and regard each in the light of all of the others.

## I. GENERAL INSTRUCTIONS

### Burden of Proof and Consideration of the Evidence

I will now instruct you with regard to where the law places the burden of making out and supporting the facts necessary to prove the legal theories in the case.

When, as in this case, the defendants deny the material allegations of the plaintiff's claims, the law places upon the plaintiff the burden of supporting and making out his claims upon every essential element of that particular claim by the greater weight or preponderance of the evidence.

Preponderance of the evidence - - means that amount of factual information presented to you in this trial which is sufficient to cause you to believe that an allegation is probably true. In order to preponderate, the evidence must have the greater convincing effect in the formation of your belief. If the evidence on a particular issue appears to be equally balanced, the party having the burden of proving that issue - in this case, the plaintiff - must fail.

You must consider all the evidence pertaining to every issue, regardless of who presented it.

## Weighing the Evidence

You, members of the jury, are judges of the facts concerning the controversy involved in this lawsuit. In order for you to determine what the true facts are, you are called upon to weigh the testimony of every witness who has appeared before you and to give the testimony of the witnesses the weight, faith, credit and value to which you think it is entitled.

You will note the manner and demeanor of witnesses while on the stand. You must consider whether the witness impressed you as one who was telling the truth or one who was telling a falsehood and whether or not the witness was a frank witness. You should consider the reasonableness or unreasonableness of the testimony of the witness; the opportunity or lack of opportunity of the witness to know the facts about which he or she testified; the intelligence or lack of intelligence of the witness; the interest of the witness in the result of the lawsuit, if any; the relationship of the witness to any of the parties to the lawsuit, if any; and whether the witness testified inconsistently while on the witness stand, or if the witness said or did something or failed to say or do something at any other time that is inconsistent with what the witness said while testifying.

These are the rules that should guide you, along with your common judgment, your common experience and your common observations gained by you in your various walks in life, in weighing the testimony of the witnesses who have appeared before you in this case.

If there is a conflict in the testimony of the witnesses, it is your duty to reconcile that conflict if you can, because the law presumes that every witness has attempted to and has testified to the truth. But if there is a conflict in the testimony of the witnesses which you are not able to reconcile, in accordance with these instructions, then it is with you absolutely to determine which of the witnesses you believe have testified to the truth and which ones you believe have testified to a falsehood.

Immaterial discrepancies do not affect a witness's testimony, but material discrepancies do. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

The greater weight or preponderance of the evidence in a case is not determined by the number of witnesses testifying to a particular fact or a particular set of facts. Rather, it depends

on the weight, credit and value of the total evidence on either side of the issue, and of this you, as jurors, are the exclusive judges.

If in your deliberations you come to a point where the evidence is evenly balanced and you are unable to determine which way the scales should turn on a particular issue, then you, the jury, must find against the plaintiff, upon whom the burden of proof has been cast in accordance with these instructions.

## Direct and Circumstantial Evidence

There are two kinds of evidence - direct and circumstantial. Direct evidence is testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which one can find another fact.

You may consider both direct and circumstantial evidence in deciding this case. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

## Expert Witness

You have heard testimony from Dr. O'Brian Cleary Smith, Dr. Michael Cosgrove, Paulette Sutton, and Dr. Martin A. Croce. An expert is allowed to express his or her opinion on those matters about which the expert has special knowledge, training, or expertise. Expert testimony is presented to you on the theory that someone who is experienced or knowledgeable in the field can assist you in understanding the evidence or in reaching an independent decision on the facts.

In weighing each expert's testimony, you may consider the expert's qualifications, his or her opinions, his or her reasons for testifying, as well as all of the other considerations that ordinarily apply when you are deciding whether or not to believe a witness' testimony. You may give expert testimony whatever weight, if any, you find it deserves in light of all the evidence in this case. You should not, however, accept a witness' testimony merely because he or she is an expert. Nor should you substitute it for your own reason, judgment, and common sense. The determination of the facts in this case rests solely with you.



## Law Enforcement Witnesses

You have heard the testimony of law enforcement officials. The fact that a witness may be employed by the city government as a law enforcement official does not mean that his or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of an ordinary witness. You as jurors have the duty of determining the believability of the testimony of all witnesses and giving a witness's testimony such weight as you believe it deserves under all of the circumstances you have observed, and this includes the testimony of police witnesses. Such testimony is to be judged by the same standards as any other testimony.

It is your decision, after reviewing all the evidence, whether to accept the testimony of the law enforcement witnesses and to give to that testimony whatever weight, if any, you find it deserves.

Meetings or Consultation with Attorneys (D-3)

You have heard Ms. Fessenden's name mentioned during the course of this trial. Ms. Fessenden was involved in the representation of Officers Lucas, Simcox, Bonner, and Berryhill.

You have also heard during the course of this trial references to these officers meeting with and/or consulting with their attorneys. Conferring or meeting with counsel is proper and no inference of impropriety or wrongdoing can be drawn from any of the officers meeting with or conferring with counsel.

## Deposition Testimony

Certain testimony has been read into evidence from depositions or previously given testimony or has been presented by video tape recording. A deposition is simply a procedure where the attorneys for one side may question a witness or an adversary party under oath before a court stenographer prior to trial. This is part of the pretrial discovery, and each side is entitled to take depositions. You may consider the testimony of a witness given at a deposition according to the same standards you would use to evaluate the testimony of a witness given at trial.

## Statements of Counsel

You must not consider as evidence any statements of counsel made during the trial. If, however, counsel for the parties have stipulated to any fact, or any fact has been admitted by counsel, you will regard that fact as being conclusively established.

As to any questions to which an objection was sustained, you must not speculate as to what the answer might have been or as to the reason for the objection, and you must assume that the answer would be of no value to you in your deliberations.

You must not consider for any purpose any offer of evidence that was rejected, or any evidence that was stricken by the court. Such matter is to be treated as though you had never known it.

You must never speculate to be true any insinuation suggested by a question asked of a witness. A question is not evidence. It may be considered only as it supplies meaning to the answer.

Crutchfield

During the direct examination of Veronica Crutchfield, counsel asked if Officer Crutchfield spoke with defendants Lucas, Berryhill, Bonner, and/or Simcox about the case. Such a question is proper to show the relationship, if any, between the witness and the defendants and can be considered by you in that regard. You are instructed, however, that there is nothing improper in the defendants and Officer Crutchfield simply having a conversation or exchanging pleasantries and you are not to draw any adverse inference from such an exchange.

## Limited Admission of Evidence

You will recall that during the course of this trial certain evidence was admitted for a limited purpose only. You must not consider such evidence for any other purpose.

For example, evidence has been admitted for the limited purpose of showing a witness's state of mind, or that the witness had notice of a particular issue. Evidence of a witness's state of mind is relevant only to show what the witness believed. Such evidence cannot be considered for the truth or accuracy of the belief. Likewise, evidence admitted only to show notice cannot be considered for the truth or accurateness of the matter it concerns.

## Totality of the Evidence

The jury may consider all evidence admitted in the case. Testimony and documents which the court allowed into evidence over a hearsay objection may be considered by you as evidence, on the same basis as all other evidence, for the purpose for which it was admitted. This, of course, is all for you, the jury, to decide.

## Separate Consideration

This case involves allegations of constitutional rights violations including the use of excessive force and false arrest and a violation of state law involving outrageous conduct. The excessive force claims in this case are only alleged against defendant Mark Lucas, the claims of false arrest are only against Anthony Berryhill and Albert Bonner, and the claims of falsification of evidence and outrageous conduct are made against all four defendants, Mark Lucas, Anthony Berryhill, Jeffrey Simcox, and Albert Bonner. Similar allegations have been made against all the defendants as to the claims of falsification of evidence and outrageous conduct. In our system of justice, it is your duty to separately consider the evidence as to each defendant, and to return a separate verdict for each one of them. For each defendant, you must decide what the evidence establishes as to that particular defendant.

Your decision as to one defendant, whatever that decision is, should not influence your decision as to any of the other defendants.

Each defendant is entitled to fair and separate consideration of his own defense and is not to be prejudiced by your decisions concerning the other defendants.



## II. STIPULATED FACTS

### Stipulated Facts

Before the trial of this case, the parties agreed to the truth of certain facts in this action. As a result of this agreement, the plaintiff and the defendants entered into certain stipulations in which they agreed that the stipulated facts could be taken as true without the parties presenting further proof on the matter. This procedure is often followed to save time in establishing facts which are undisputed.

Facts stipulated to by the parties in this case include the following:

1. The plaintiff, Jarvis Robinson, is the adult son of Jeffrey Robinson, whose death is the subject of this action. He is a proper statutory representative to bring this cause of action on behalf of Mr. Robinson's other heirs at law.
2. The incident in this case occurred while the individual defendants were acting in their capacity as duly appointed officers of the City of Memphis Police Department.
3. The defendant, Mark Lucas, is the Memphis Police Department Officer who shot Mr. Robinson. His

immediate supervisor, who was at the scene of the incident, was Lieutenant Anthony Berryhill. The other named defendants were fellow members of the Drug Response Team of the Vice Narcotics Unit conducting a search of the premises pursuant to a search warrant where Jeffrey Robinson was living at the time of the shooting.

4. The events that pertain to this case occurred on July 30, 2002, at 1523 Rozelle, in Memphis, Tennessee. This residence was the subject of a search warrant issued as a result of a tip from a confidential informant to defendant Memphis Police Officer Albert Bonner, resulting in a search warrant signed by General Sessions Judge Joyce Broffitt alleging that quantities of marijuana, and possibly quantities of cocaine, were being distributed from this location by two individuals with street names "Snag" and "Carl."
5. The Baron Hirsch Temple owned the residence on Rozelle, which was adjacent to its cemetery. Jeffrey Robinson was employed by Baron Hirsch as a caretaker and grave digger. Jeffrey Robinson lived in the residence.
6. Jeffrey Robinson was struck by a bullet from defendant Lucas' department issued weapon. The bullet struck Mr. Robinson at or near his left cheek, lacerated his left

jugular artery, severed the left carotid artery, and lodged at the C-5 level of his spinal column.

7. Officers seized approximately 2 grams of marijuana residue from a locked camper located in the backyard.
8. Jeffrey Robinson was charged with aggravated assault and simple possession of marijuana. Lieutenant Berryhill approved the charges.
9. Mark Lucas has been an officer with the Memphis Police Division since 1995. He was assigned to the Vice Narcotics Unit in 1999.

### III. GENERAL INSTRUCTIONS ON THE APPLICABLE LAW

Turning now to the legal theories in the case, it is my duty to tell you what the law is. If any lawyer has told you that the law is different from what I tell you it is, you must take the law as I give it to you. That is my duty. However, it is your duty, and yours alone, to determine what the facts are and after you have determined what the facts are, to apply those facts to the law as I give it to you, free from any bias, prejudice, or sympathy, either one way or the other.

There are four theories of recovery in this case; (1) whether, under 42 U.S.C. § 1983, Jeffrey Robinson's Fourth Amendment rights to be free from the use of excessive force were violated when defendant Mark Lucas shot him on July 30, 2002; (2) whether, under 42 U.S.C. § 1983, the defendants Anthony Berryhill and Albert Bonner falsely arrested Jeffrey Robinson; (3) whether, under 42 U.S.C. § 1983, the defendants falsified evidence as to Jeffrey Robinson; and (4) whether, under the laws of the State of Tennessee, the conduct of the officers after the shooting was "outrageous" or constituted intentional infliction of emotional distress.

Plaintiff asserts three theories of recovery in this case involving the violation of Jeffrey Robinson's Fourth Amendment right to be free from the use of excessive force, from false arrest, and from the use of falsified evidence in obtaining false arrest. The law to be applied is the federal civil rights law which provides a remedy for individuals who have been deprived of their constitutional rights under color of state law. Section 1983 of Title 42 of the United States Code states:

Every person who, under color of any statute, ordinance, regulation, custom or usage of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Purpose of Statute (87-66)

Section 1983 creates a form of liability in favor of persons who have been deprived of rights, privileges and immunities secured to them by the United States Constitution and federal statutes. Before section 1983 was enacted in 1871, people so injured were not able to sue state officials or persons acting under color of state law for money damages in federal court. In enacting the statute, Congress intended to create a remedy as broad as the protection provided by the Fourteenth Amendment and federal laws.

Section 1983 was enacted to give people a federal remedy enforceable in federal court because it was feared that adequate protection of federal rights might not be available in state courts.

Burden of Proof (87-67)

I shall shortly instruct you on the elements of plaintiff's section 1983 claims. As I mentioned earlier, plaintiff's claim for excessive force is asserted against defendant Lucas only. Plaintiff's claim for false arrest is asserted against defendants Berryhill and Bonner and plaintiff's claim for falsification of evidence is asserted against all four defendants.

The plaintiff has the burden of proving each and every element of his section 1983 claims by a preponderance of the evidence. As to plaintiff's section 1983 claims, if you find that any one of the elements of the claim has not been proven by a preponderance of the evidence, you must return a verdict regarding that claim for the defendant against whom it is asserted.

It is not necessary, however, for plaintiff to prove that a particular defendant intended to deprive Jeffrey Robinson of his constitutional rights or that a defendant acted willfully or purposefully. It is sufficient to establish that the deprivation of constitutional rights or privileges was the natural consequence of the actions of the particular defendant acting under color of law, irrespective of whether such consequence was intended.





To establish a claim under section 1983, plaintiff must establish, by a preponderance of the evidence, each of the following three elements:

First, that the conduct complained of was committed by a person acting under color of state law;

Second, that this conduct deprived Jeffrey Robinson of rights, privileges or immunities secured by the Constitution or laws of the United States (i.e., the right to be free from the use of excessive force, the right to be free from false arrest, or the right to be free from arrest based on fabricated evidence); and

Third, that the defendant's acts were the proximate cause of the injuries and consequent damages sustained by Jeffrey Robinson.

I shall now examine each of the three elements in greater detail.

These three elements apply to each of the plaintiff's theories under 42 U.S.C. § 1983. For the plaintiff to prevail on

a particular theory, each element must be established by the greater weight or preponderance of the evidence as to the defendant you are considering. Remember, each defendant is entitled to separate consideration under each theory presented by the plaintiff under section 1983.

Color of State Law (87-69)

The first element of the plaintiff's claim is that the defendant acted under color of state law. The phrase "color of state law" is a shorthand reference to the words of section 1983, which includes within its scope action taken under color of any statute, ordinance, regulation, custom or usage, of any state. The term "state" encompasses any political subdivision of a state, such as a county or city, and also any state agencies or a county or city agency.

Action under color of state law means action that is made possible only because the actor is clothed with the authority of the state. Section 1983 forbids action taken under color of state law where the actor misuses power that he possesses by virtue of state law.

An actor may misuse power that he possesses by virtue of state law even if his acts violate state law; what is important is that the defendant was clothed with the authority of state law, and that the defendant's action was made possible by virtue of state law.

Whether a defendant committed the act alleged by the plaintiff is a question of fact for you, the jury, to decide. I will instruct you in a moment on how you will decide that issue. For now, assuming that defendant Lucas did use excessive force, I instruct you that, since defendant Lucas was an official of the City of Memphis at the time of the acts in question, he was acting under color of state law. Likewise, assuming that either defendants Berryhill and/or Bonner made a false arrest or any of the defendants falsified evidence, I instruct you that, since each defendant was an official of the City of Memphis at the time of the acts in question, he was acting under color of state law. In other words, the first statutory requirement is satisfied under each of plaintiff's theories under 42 U.S.C. § 1983.

Deprivation of Right (87-74)

The second element of plaintiff's claim is that Jeffrey Robinson was deprived of a constitutional right. Plaintiff alleges (1) that defendant Lucas used excessive force against Jeffrey Robinson; (2) that defendants Berryhill and Bonner falsely arrested Jeffrey Robinson (that is, they arrested Robinson without probable cause); and (3) that all four defendants participated or knowingly condoned the fabrication of evidence which resulted in the false arrest of Jeffrey Robinson by defendants Berryhill and/or Bonner. Under the Fourth Amendment, all persons are protected against false arrest, arrest based on fabricated evidence, and the use of excessive force by government officials.

In order for the plaintiff to establish the second element, he must show these things by a preponderance of the evidence: first, that the particular defendant you are considering committed the acts alleged by the plaintiff; second, that those acts caused Jeffrey Robinson to suffer the loss of a federal right, in this case, the right to be free from excessive force, false arrest, and the fabrication of evidence used to make a false arrest; and, third, that, in performing the acts alleged, the defendant you are considering, in the case of plaintiff's third theory (that is, falsification of evidence) had the

required state of mind (that is, that under that theory, the defendant's action was intentional or reckless and not merely by mistake or accident). Please note that under the first theory (excessive force), defendant Lucas' state of mind, his subjective thoughts, are not part of your analysis. You are also instructed that under the second theory (false arrest) the states of mind of Officers Berryhill and Bonner are not a factor that you can consider. Both of these theories are considered under an objective not a subjective (or state of mind) standard.

As to the falsification of evidence theory, the state of mind (that is, what each defendant thought, or had in his mind) is part of your analysis, and I will explain that in more detail later in these instructions.

Excessive Force (87-74C)

\_\_\_\_\_I will now explain some more about the first theory, the theory of excessive force, which is only asserted as to defendant Mark Lucas. The Fourth Amendment to the United States Constitution protects persons from being subjected to the use of excessive force. In other words, a law enforcement official may only employ the amount of force necessary under the circumstances. In certain circumstances, the use of deadly force is considered a form of excessive force. To this extent, the plaintiff must establish that defendant Lucas's use of deadly force was not objectively reasonable. A police officer's use of deadly force is lawful if and only if it was used in an objectively reasonable manner.

In order for the use of deadly force to be considered "objectively reasonable" a police officer must have probable cause to believe that the person he is confronting poses an immediate threat of death or serious physical harm to himself.

The presence or absence of objective reasonableness in the use of deadly force must be determined based upon the totality of the circumstances which actually existed at the time the decision to use deadly force was made. Thus, the question for you as jurors to answer is whether an objectively reasonable police

officer would use deadly force in response to the circumstances as they were presented to defendant Lucas at the time he used deadly force. The subjective thoughts, fears, intentions, or misperceptions of defendant Lucas are irrelevant to this analysis. Thus, misperceptions of movements of a gun, or a knife, will not justify the use of deadly force, even if you conclude that defendant Lucas honestly, though mistakenly, thought he saw those things.

The decision to use deadly force can be an extremely difficult one for a police officer, and often must be made in a "split second" while events are rapidly developing. While the shortness of time may be a factor in any determination of whether or not the use of deadly force was objectively reasonable, that fact alone will never immunize an otherwise unreasonable use of deadly force. Thus, although you may consider the length of time which defendant Lucas had to make his decision as a factor, you must consider this as but one factor in the totality of the circumstances when determining the objective reasonableness of defendant Lucas's conduct.

The focus of your review of the evidence should be confined to the actual acts and conduct of Jeffrey Robinson and whether he did anything which would lead an objectively reasonable police officer to conclude that he posed an immediate threat of death or



serious physical harm to the officer. Within the context of the factual dispute between the parties, your attention should be given to which of the competing versions of events is more probably true than the other.

Under his first theory, the plaintiff claims that Jeffrey Robinson was subjected to excessive force by defendant Lucas when the defendant shot Jeffrey Robinson. Again, you must determine whether the acts caused the plaintiff to suffer the loss of a federal right and whether the amount of force used was that which a reasonable officer would have employed under similar circumstances. In making this determination, you may take into account the severity of the crime at issue, whether Jeffrey Robinson posed an immediate threat to the safety of defendant Lucas or others, and whether Jeffrey Robinson actively resisted arrest or attempted to evade arrest by flight. However, you do not have to determine whether defendant Lucas had less intrusive alternatives available; for the defendant need only to have acted within that range of conduct identified as reasonable. If you find that the amount of force used was greater than a reasonable officer would have employed, the plaintiff will have established the claim of loss of a federal right.

False Arrest - Defined  
Arrest by Law Enforcement Officer  
(T.P.I. 8.11)

I will now discuss the second element required under plaintiff's second and third theories under 42 U.S.C. § 1983. Those theories are false arrest as to Lieutenant Berryhill and Officer Bonner and falsification of evidence as previously discussed as to all four defendants. These are related theories and the second claim -- false arrest -- must be established by a preponderance of the evidence before you can consider any claim under falsification of evidence. The Fourth Amendment of the United States Constitution protects against unreasonable seizures and, in particular, protects persons from being subjected to an arrest without either a valid arrest warrant or probable cause for the arrest.

A false arrest is an arrest made without probable cause. Plaintiff asserts that there was no probable cause for any of the charges against Mr. Robinson.

The plaintiff also alleges that the officers fabricated or falsified evidence upon discovering that Jeffrey Robinson was unarmed and that the officers falsely arrested him (that is, arrested him without probable cause for any of the charges placed against him). For example, plaintiff asserts that, among other things, the defendant officers placed the box cutter next to

Jeffrey Robinson in an attempt to create probable cause for the subsequent arrest of Jeffrey Robinson for aggravated assault.

Under the United States Constitution, no person may be arrested without due process of law. In other words, a person may not be arrested without probable cause for such an arrest. This means that a police officer must have information that would lead a reasonable person who possesses the same official expertise as the officer to conclude that the person being arrested has committed or is about to commit a crime, whether in the police officer's presence or otherwise.

In the instant case, the plaintiff claims that Jeffrey Robinson was unlawfully arrested. As already noted, you must first determine that the defendant you are considering acted in the manner the plaintiff alleges. In order to determine that the acts caused Jeffrey Robinson to suffer the loss of a federal right, specifically, here, the deprivation of liberty without due process of law due to an unlawful arrest, you must then determine whether the defendant acted within or outside the boundaries of his lawful authority to make such an arrest using the reasonableness standard just enunciated.

## Probable Cause

You may find that the defendant officers had probable cause to arrest Jeffrey Robinson if you find that the defendants had information that would lead a prudent police officer, or one of reasonable caution, believing in the circumstances shown, to conclude that Jeffrey Robinson committed, was committing, or was about to commit a crime.

Probable cause requires a probability or substantial chance of criminal activity (i.e., aggravated assault, simple possession of marijuana), not an actual showing of criminal activity.

If probable cause exists to arrest an individual, a police officer is not liable under the theory of false arrest even if the person is later found to be innocent of the crime.

If you find that the officers had probable cause for either of the charges that were placed against Mr. Robinson then you must find that there was no false arrest.

State of Mind

As I instructed you earlier in regard to the second element of plaintiff's third theory under 42 U.S.C. § 1983 (that is, plaintiff's claim of falsification of evidence), the state of mind of each defendant must be determined by you the jury. Under plaintiff's theory that the defendants falsified evidence resulting in Jeffrey Robinson's false arrest, plaintiff must not only prove that Jeffrey Robinson was falsely arrested (that is, that either Berryhill or Bonner are liable for false arrest), but also must prove by the preponderance of the evidence that the individual defendant you are considering acted intentionally or recklessly in falsifying evidence that materially contributed to Jeffrey Robinson's false arrest (i.e., arrest without probable cause).

I instruct you that to establish a claim under section 1983 for falsification of evidence causing an unlawful arrest, the plaintiff must show that the defendant you are considering acted intentionally or recklessly. If you find that the acts of the defendant were merely negligent, then, even if you find the plaintiff was injured as a result of those facts, you must return a verdict for that defendant on the claim of falsification of evidence.

An act is intentional 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. In determining whether the defendant you are considering acted with the requisite knowledge, you should remember that while witnesses may see and hear and so be able to give direct evidence of what a person does or fails to do, there is no way of looking into a person's mind. Therefore, you have to depend on what was done and what the people said was in their minds and your belief or disbelief with respect to those facts.

An act is reckless if done in conscious disregard of its probable consequences. In determining whether the defendant you are considering acted with the requisite recklessness, you should remember that while witnesses may see and hear and so be able to give direct evidence of what a person does or fails to do, there is no way of looking into a person's mind. Therefore, you have to depend on what was done and what the people said was in their minds and your belief and disbelief with respect to those facts.

An act is negligent if the defendant was under a duty or obligation, recognized by law, that required him to adhere to a certain standard of conduct to protect others against unreasonable risks, and he breached that duty or obligation. Mere negligence is insufficient to create liability under the third theory.

## Inferring Required Mental State

Next, I want to explain something about proving a defendant's state of mind. Remember, this applies only to plaintiff's theory of falsification of evidence.

Ordinarily, there is no way that a defendant's state of mind can be proved directly, because no one can read another person's mind and tell what that person is thinking.

But a defendant's state of mind can be proved indirectly from the surrounding circumstances. This includes things like what the defendant said, what the defendant did, how the defendant acted, and any other facts or circumstances in evidence that show what was in the defendant's mind.



The third element that plaintiff must prove regarding each of his section 1983 theories is that the acts of the defendant you are considering under the theory you are considering were the proximate cause of harm sustained by Jeffrey Robinson. Thus, under the excessive force claim, plaintiff's first theory, plaintiff must prove that the acts of the defendant Lucas were the proximate cause of harm sustained by Jeffrey Robinson. Likewise, in regards to the allegation of false arrest, plaintiff must prove that the acts of defendants Berryhill and/or Bonner were the proximate cause of the harm sustained by Jeffrey Robinson. Similarly, in regards to the allegations of falsification of evidence, plaintiff must prove that the actions of the defendant you are considering were the proximate cause of the harm sustained by Jeffrey Robinson.

Proximate cause means that there must be a sufficient causal connection between the act or omission of a defendant and any injury or damage sustained by the injured party. An act or omission is a proximate cause if it was a substantial factor in bringing about or actually causing injury, that is, if the injury or damage was a reasonably foreseeable consequence of the given defendant's act or omission. If an injury was a direct result or a reasonably probable consequence of a defendant's act or

omission, it was proximately caused by such act or omission. In other words, if a defendant's act or omission had such an effect in producing the injury that reasonable persons would regard it as being a cause of the injury, then the act or omission is a proximate cause.

A proximate cause need not always be the nearest cause either in time or in space. In addition, there may be more than one proximate cause of an injury or damage. Many factors or the conduct of two or more people may operate at the same time, either independently or together, to cause an injury or loss.

## Section 1983 Summary

In summary, if you find that plaintiff has established each of the elements under the theory you are considering under section 1983 by the greater weight or preponderance of the evidence as to the defendant you are considering, then you will find in favor of the plaintiff as to that particular claim. If you find that plaintiff has failed to establish any element of the theory you are considering by the greater weight or preponderance of the evidence, then you must find for the defendant you are considering as to that particular claim.

## Extreme and Outrageous Conduct

The fourth theory of recovery in this case is plaintiff's claim of extreme and outrageous conduct by the defendant officers. Plaintiff alleges that the officers actions after the shooting were extreme and outrageous. Specifically, that the defendant officers falsified evidence by placing a box cutter next to the decedent Jeffrey Robinson, that the defendant officers falsely arrested the decedent charging him with aggravated assault and possession of marijuana, which caused him to be held in the hospital prison ward without access to friends or family.

Extreme and outrageous conduct is conduct that goes beyond the bounds of decency and is considered atrocious and utterly intolerable in a civilized community. It is conduct that would cause an average member of the community to immediately react in outrage upon hearing the facts of the incident.

All persons are expected and required to be hardened to a certain amount of language and to occasional acts that are inconsiderate and unkind. Mere insults, indignities, threats, annoyances, petty oppressions or other trivialities are not extreme and outrageous conduct.

Plaintiff is entitled to damages for outrageous conduct if you find that:

1. The conduct of the defendant you are considering was intentional or reckless;
2. The conduct of the defendant you are considering was so outrageous that it clearly exceeded the bounds of decency, making it intolerable in a civilized community; and
3. Jeffrey Robinson suffered a serious mental injury as a result of that conduct.

A serious or severe emotional injury occurs when a reasonable person would be unable to adequately cope with the mental stress created by the defendant's conduct.

Intentional Infliction of Emotional Distress

(D-7)

I further instruct you that intentional infliction of emotional distress and outrageous conduct are not two separate claims, but are simply different names for the same cause of action.

Absent physical injury, the law does not permit the recovery of damages for emotional distress unless the emotional distress is severe. A plaintiff is entitled to recover for severe emotional distress (1) actually caused and proximately caused by the extreme and outrageous conduct of another; and (2) done either with the specific intent to cause emotional distress or with a reckless disregard of the probability of causing distress.

It is not enough that the defendant you are considering acted with a tortious intent or even a criminal intent or that he intended to inflict emotional distress or even that his conduct was malicious.

In this case, the severe emotional distress must have been caused by and be the result of the alleged false arrest and/or alleged falsification of evidence and not the result of the shooting of Jeffrey Robinson or the resulting paralysis.

Police Department Policy (D-4)

During the course of this trial, policies of the Memphis Police Department were introduced into evidence. Policies of the City of Memphis Police Department do not carry the force of law and there is no constitutional right to have policies followed. The fact that an employee followed policy does not, in and of itself, make his actions lawful or constitutional and, likewise, the fact that an employee did not follow policy does not, in and of itself, make his actions unlawful or unconstitutional.

#### IV. DAMAGES

In this case, if you find in favor of the defendant you are considering, you will not be concerned with the question of damages against that defendant. But if you find in favor of the plaintiff against any defendant, you will be concerned with the question of damages. It is my duty to instruct you as to the proper measure of damages to be applied in that circumstance.

I shall now instruct you on the award of damages allowed under the law. The fact that I am giving you instructions on damages should not be considered an indication of any view of mine as to which party is entitled to your verdict. Instructions as to the measure of damages are given only for your guidance and are to be applied only in the event that you should find in favor of the plaintiff by a preponderance of the evidence, in accordance with the instructions that I have given you. If you decide that the plaintiff is not entitled to prevail with respect to his claims, you shall not answer any questions on the verdict form with regard to damages.



## Compensatory Damages

The damages that you may consider are compensatory damages. Compensatory damages are awarded for the actual injuries suffered by Jeffrey Robinson because of the deprivation of his constitutional rights.

If you do find in favor of the plaintiff, you may award a sum of money you believe will justly and fairly compensate the plaintiff for any damages you believe that Jeffrey Robinson sustained as a result of the shooting on July 30, 2002.

You shall award actual damages only for those injuries which you find that plaintiff has proven by a preponderance of the evidence. Moreover, you shall award actual damages only for those injuries which you find plaintiff has proven by a preponderance of the evidence to have been the direct result of conduct of the defendant you are considering.

In arriving at an award for damages, you may consider the following items of compensatory damage:

1. The physical pain and mental anguish experienced by Jeffrey Robinson between the time of the shooting and his death;

2. The reasonable value of any of Jeffrey Robinson's property lost or destroyed during, or as a result of the defendant officer or officers actions; and
3. The reasonable cost of Jeffrey Robinson's medical care and hospitalization.

With regard to the element of compensatory damages which compensates for physical pain and mental anguish, you are instructed that it is not necessary that evidence of the value of such intangible emotions be introduced by the plaintiff in order for him to recover such damages. In that respect, it is not value you are trying to determine, but an amount that will fairly compensate plaintiff for the physical pain and mental anguish that Jeffrey Robinson suffered between the time of the shooting (July 30, 2002) and his death (September 16, 2002). There is not an exact standard for fixing the compensation to be awarded for such elements of damage. Rather, any such award should be fair and just in light of the evidence presented.

## Double Recovery

If you find that the defendant police officers violated more than one of Jeffrey Robinson's rights, plaintiff is entitled to be compensated for the injuries Jeffrey Robinson actually suffered. Thus, if the defendant police officers violated more than one of Jeffrey Robinson's rights, but the resulting injury was no greater than it would have been had defendant police officers violated one of those rights, you should award an amount of compensatory damages no greater than you would award if defendant police officers had violated only one of Jeffrey Robinson's rights.

However, if defendant police officers violated more than one of Jeffrey Robinson's rights and you can identify separate injuries resulting from the separate violations, you should award an amount of compensatory damages equal to the total of the damages you believe will fairly and justly compensate the plaintiff for the separate injuries Jeffrey Robinson suffered.

Nominal Damages (87-88)

If you return a verdict for the Plaintiff, but find that Plaintiff has failed to prove by a preponderance of the evidence that he suffered any actual damages, then you must return an award of damages in some nominal or token amount not to exceed the sum of one dollar.

## Punitive Damages

The plaintiff has asked that you make an award of punitive damages, but this award may be made only under the following circumstances. You may consider an award of punitive damages only if you find that the plaintiff has suffered actual damage as a result of fault of the defendant you are considering and have made an award for compensatory damages.

The purpose of punitive damages is not to further compensate the plaintiff, but to punish the wrongdoer and deter others from committing similar wrongs in the future. Punitive damages may be considered if, and only if, the plaintiff has shown by clear and convincing evidence that a defendant has acted either intentionally, recklessly, maliciously, or fraudulently.

Clear and convincing evidence is a different and higher standard than preponderance of the evidence. It means that the defendant's wrong, if any, must be so clearly shown that there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence.

A person acts intentionally when it is the person's purpose or desire to do a wrongful act or to cause the result.

A person acts recklessly when the person is aware of, but consciously disregards a substantial or unjustifiable risk of injury or damage to another. Disregarding the risk must be a gross deviation from the standard of care that an ordinary person would use under the circumstances.

A person acts maliciously when the person is motivated by ill will, hatred, or personal spite.

A person acts fraudulently when: (1) the person intentionally either misrepresents an existing material fact or causes a false impression of an existing material fact to mislead or to obtain an unfair or undue advantage; and (2) another person suffers injury or loss because of reasonable reliance upon the representation.

If you decide to award punitive damages, you will not assess an amount of punitive damages at this time. You will, however, report your findings to the Court.

If you, the jury, find that the conduct of the defendant you are considering, as determined under these instructions, was intentional, reckless, malicious, or fraudulent towards Jeffrey Robinson then indicate so in your response on the Verdict form

(Questions 6, 8, 15, 18, 21 and 24), but do not indicate the amount of punitive damages you would award.

Of course, if you find that the actions of the defendant you are considering were not intentional, reckless, malicious, or fraudulent towards Jeffrey Robinson, then you should so indicate in your response on the Verdict form (Questions 6, 8, 15, 18, 21 and 24).

Do Not Consider Others

You are here to determine the liability of each defendant as to each claim asserted from the evidence in this case. You are not called upon to return a verdict as to the liability of any other person or persons. Nor are you to consider any liability the City of Memphis may or may not have in this case. You must determine whether or not the evidence in the case convinces you by the greater weight or preponderance of the evidence liability of each defendant without regard to any belief you may have about the liability of any other person or persons or municipal corporations.



Verdict Form

Finally, ladies and gentlemen of the jury, we come to the point where we will discuss the form of your verdict and the process of your deliberations. You will be taking with you to the jury room a verdict form which reflects your findings. The verdict form reads as follows:

[Read Verdict Form]

You will be selecting a presiding juror after you retire to the jury room. That person will preside over your deliberations and be your spokesperson here in court. When you have completed your deliberations, your presiding juror will fill in and sign the verdict form.

Your verdict must represent the considered judgment of each of you. In order to return a verdict, it is necessary that each of you agree to that verdict. That is, each of your verdicts must be unanimous.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow 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 your fellow jurors, or for the mere purpose of returning a verdict.

We will be sending with you to the jury room all of the exhibits in the case that have been marked and admitted as evidence in the case. The exhibits will be there for your review and consideration though you may not have previously seen all of them. You may take a break before you begin deliberating but do not begin to deliberate and do not discuss the case at any time unless all eight of you are present together in the jury room. Some of you have taken notes. I remind you that these are for your own individual use only and are to be used by you only to refresh your recollection about the case. They are not to be shown to others or otherwise used as a basis for your discussion about the case.

If you should desire to communicate with me at any time, please write down your message or question and pass the note to the Court Security Officer who will bring it to my attention. I will then respond as promptly as possible after consulting with counsel either in writing or by having you return to the courtroom so that I can address you orally. Please understand that I may only answer questions about the law and I cannot answer questions about the evidence. I caution you, however, with regard to any message or question you might send, that you should not tell me your numerical division at the time.

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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JARVIS ROBINSON, Individually )  
and on behalf of the heirs at )  
law of JEFFREY ROBINSON, )  
deceased, )

Plaintiff, )

v. )

No. 02-2878

MARK LUCAS, ANTHONY BERRYHILL, )  
JEFFREY SIMCOX, and ALBERT )  
BONNER, )

Defendant. )

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V E R D I C T

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**I. 42 U.S.C. § 1983  
(Excessive Force Claim)  
(Mark Lucas Only/Shooting Claim)**

1. Has the plaintiff proven by a preponderance of the evidence that defendant MARK LUCAS used excessive force against Jeffrey Robinson on July 30, 2002, in violation of his federally protected rights?

YES \_\_\_\_\_ NO \_\_\_\_\_

If your answer to Question No. 1 is "YES," then proceed to the following questions on damages. If your answer to Question No. 1 is "NO," proceed to Question No. 3 and the questions that follow.

Answer Questions 2 only if Question No. 1 was answered

"YES."

2. Has plaintiff proven by a preponderance of the evidence that Jeffrey Robinson suffered compensatory damages, such as physical injury, emotional pain and suffering, including anguish, distress, fear, humiliation, shame or worry, which were proximately caused by the use of excessive force by the defendant MARK LUCAS?

YES \_\_\_\_\_ NO \_\_\_\_\_

If your answer to Question No. 2 is "YES," then under the laws as given to you in these instructions, state the amount of compensatory damages that the plaintiff should be awarded from defendant MARK LUCAS because of his use of excessive force. [If you have already awarded these damages against this defendant, insert the words "already awarded these damages" and state the amount you have already awarded.]

AMOUNT: \$ \_\_\_\_\_

**II. 42 U.S.C. § 1983  
(False Arrest Claims)  
(Defendants Berryhill and Bonner Only/Post Shooting Claims)**

3. Has the plaintiff proven by a preponderance of the evidence that defendant ANTHONY BERRYHILL falsely arrested Jeffrey Robinson on July 30, 2002, in violation of his federally protected rights?

YES \_\_\_\_\_ NO \_\_\_\_\_

4. Has the plaintiff proven by a preponderance of the evidence that defendant ALBERT BONNER falsely arrested Jeffrey Robinson on July 30, 2002, in violation of his federally protected rights?

YES \_\_\_\_\_ NO \_\_\_\_\_

### **Damages/Berryhill**

Answer Question Nos. 5 and 6 only if Question 3 was answered "YES."

5. Has plaintiff proved by a preponderance of the evidence that Jeffrey Robinson suffered compensatory damages, such as physical injury, emotional pain and suffering, including anguish, distress, fear, humiliation, shame or worry, which were proximately caused by the actions of defendant ANTHONY BERRYHILL in falsely arresting Jeffrey Robinson on July 30, 2002?

YES \_\_\_\_\_ NO \_\_\_\_\_

If your answer to Question No. 5 is "YES," then under the laws as given to you in these instructions, state the amount of compensatory damages that the plaintiff should be awarded from defendant ANTHONY BERRYHILL because of his false arrest of Jeffrey Robinson. [If you have already awarded these damages against this

defendant, insert the words "already awarded these damages" and state the amount you have already awarded.]

AMOUNT: \$\_\_\_\_\_

6. Has the plaintiff shown by clear and convincing evidence that the defendant ANTHONY BERRYHILL'S actions in falsely arresting Jeffrey Robinson were intentional, reckless, malicious, or fraudulent?

YES \_\_\_\_\_ NO \_\_\_\_\_

#### **Damages/Bonner**

Answer Question Nos. 7 and 8 only if Question 4 was answered "YES."

7. Has plaintiff proved by a preponderance of the evidence that Jeffrey Robinson suffered compensatory damages, such as physical injury, emotional pain and suffering, including anguish, distress, fear, humiliation, shame or worry, which were proximately caused by the actions of defendant ALBERT BONNER in falsely arresting Jeffrey Robinson on July 30, 2002?

YES \_\_\_\_\_ NO \_\_\_\_\_

If your answer to Question No. 7 is "YES," then under the laws as given to you in these instructions, state

the amount of compensatory damages that the plaintiff should be awarded from defendant ALBERT BONNER because of his false arrest of Jeffrey Robinson. [If you have already awarded these damages against this defendant, insert the words "already awarded these damages" and state the amount you have already awarded.]

AMOUNT: \$ \_\_\_\_\_

8. Has the plaintiff shown by clear and convincing evidence that the defendant ALBERT BONNER'S actions in falsely arresting Jeffrey Robinson were intentional, reckless, malicious, or fraudulent?

YES \_\_\_\_\_ NO \_\_\_\_\_

**III. 42 U.S.C. § 1983**  
**(Falsification of Evidence)**  
**(Defendants Lucas, Berryhill, Simcox and Bonner/Post Shooting Claims)**  
**Liability**

9. Has the plaintiff proven by a preponderance of the evidence that defendant MARK LUCAS falsified evidence against Jeffrey Robinson on July 30, 2002, in violation of his federally protected rights?

YES \_\_\_\_\_ NO \_\_\_\_\_

10. Has the plaintiff proven by a preponderance of the evidence that defendant ANTHONY BERRYHILL falsified



evidence against Jeffrey Robinson on July 30, 2002, in violation of his federally protected rights?

YES \_\_\_\_\_ NO \_\_\_\_\_

11. Has the plaintiff proven by a preponderance of the evidence that defendant JEFFREY SIMCOX falsified evidence against Jeffrey Robinson on July 30, 2002, in violation of his federally protected rights?

YES \_\_\_\_\_ NO \_\_\_\_\_

12. Has the plaintiff proven by a preponderance of the evidence that defendant ALBERT BONNER falsified evidence against Jeffrey Robinson on July 30, 2002, in violation of his federally protected rights?

YES \_\_\_\_\_ NO \_\_\_\_\_

#### **Damages/Lucas**

Answer Question Nos. 13, 14 and 15 only if Question No. 9 was answered "YES."

13. Has plaintiff proven by a preponderance of the evidence that Jeffrey Robinson suffered compensatory damages, such as physical injury, emotional pain and suffering, including anguish, distress, fear, humiliation, shame or worry, which were proximately caused by the actions

of defendant MARK LUCAS in falsifying evidence against Jeffrey Robinson on July 30, 2002?

YES \_\_\_\_\_ NO \_\_\_\_\_

If your answer to Question No. 13 is "YES," then under the laws as given to you in these instructions, state the amount of compensatory damages that the plaintiff should be awarded from defendant MARK LUCAS because of his falsifying evidence against Jeffrey Robinson. [If you have already awarded these damages against this defendant, insert the words "already awarded these damages" and state the amount you have already awarded.]

AMOUNT: \$ \_\_\_\_\_

14. If your answer to Question No. 9 is "YES" and you find that the plaintiff is not entitled to compensatory damages from defendant MARK LUCAS because of his falsifying evidence against Jeffrey Robinson, then you must award nominal damages in accordance with the instructions given to you.

AMOUNT: \$ \_\_\_\_\_

15. Has the plaintiff shown by clear and convincing evidence that the defendant MARK LUCAS' actions in

falsifying evidence against Jeffrey Robinson were intentional, reckless, malicious, or fraudulent?

YES \_\_\_\_\_ NO \_\_\_\_\_

**Damages/Berryhill**

Answer Questions 16, 17 and 18 only if Question No. 10 was answered "YES."

16. Has plaintiff proven by a preponderance of the evidence that Jeffrey Robinson suffered compensatory damages, such as physical injury, emotional pain and suffering, including anguish, distress, fear, humiliation, shame or worry, which were proximately caused by the actions of defendant ANTHONY BERRYHILL in falsifying evidence against Jeffrey Robinson on July 30, 2002?

YES \_\_\_\_\_ NO \_\_\_\_\_

If your answer to Question No. 16 is "YES," then under the laws as given to you in these instructions, state the amount of compensatory damages that the plaintiff should be awarded from defendant ANTHONY BERRYHILL because of his falsifying evidence against Jeffrey Robinson. [If you have already awarded these damages against this defendant, insert the words "already awarded these damages" and state the amount you have already awarded.]

AMOUNT: \$ \_\_\_\_\_

17. If your answer to Question No. 10 is "YES" and you find that the plaintiff is not entitled to compensatory damages from defendant ANTHONY BERRYHILL because of his falsifying evidence against Jeffrey Robinson, then you must award nominal damages in accordance with the instructions given to you.

AMOUNT: \$ \_\_\_\_\_

18. Has the plaintiff shown by clear and convincing evidence that the defendant ANTHONY BERRYHILL'S actions in falsifying evidence against Jeffrey Robinson were intentional, reckless, malicious, or fraudulent?

YES \_\_\_\_\_ NO \_\_\_\_\_

**Damages/Simcox**

Answer Question Nos. 19, 20 and 21 only if Question No. 11 was answered "YES."

19. Has plaintiff proven by a preponderance of the evidence that Jeffrey Robinson suffered compensatory damages, such as physical injury, emotional pain and suffering, including anguish, distress, fear, humiliation, shame or worry, which were proximately caused by the actions

of defendant JEFFREY SIMCOX in falsifying evidence against Jeffrey Robinson on July 30, 2002?

YES \_\_\_\_\_ NO \_\_\_\_\_

If your answer to Question No. 19 is "YES," then under the laws as given to you in these instructions, state the amount of compensatory damages that the plaintiff should be awarded from defendant JEFFREY SIMCOX because of his falsifying evidence against Jeffrey Robinson.

[If you have already awarded these damages against this defendant, insert the words "already awarded these damages" and state the amount you have already awarded.]

AMOUNT: \$ \_\_\_\_\_

20. If your answer to Question No. 11 is "YES" and you find that the plaintiff is not entitled to compensatory damages from defendant JEFFREY SIMCOX because of his falsifying evidence against Jeffrey Robinson, then you must award nominal damages in accordance with the instructions given to you.

AMOUNT: \$ \_\_\_\_\_

21. Has the plaintiff shown by clear and convincing evidence that the defendant JEFFREY SIMCOX'S actions in

falsifying evidence against Jeffrey Robinson were intentional, reckless, malicious, or fraudulent?

YES \_\_\_\_\_ NO \_\_\_\_\_

**Damages/Albert Bonner**

Answer Question Nos. 22, 23 and 24 only if Question No. 12 was answered "YES."

22. Has plaintiff proven by a preponderance of the evidence that Jeffrey Robinson suffered compensatory damages, such as physical injury, emotional pain and suffering, including anguish, distress, fear, humiliation, shame or worry, which were proximately caused by the actions of defendant ALBERT BONNER in falsifying evidence against Jeffrey Robinson on July 30, 2002?

YES \_\_\_\_\_ NO \_\_\_\_\_

If your answer to Question No. 22 is "YES," then under the laws as given to you in these instructions, state the amount of compensatory damages that the plaintiff should be awarded from defendant ALBERT BONNER because of his falsifying evidence against Jeffrey Robinson.

[If you have already awarded these damages against this defendant, insert the words "already awarded these damages" and state the amount you have already awarded.]

AMOUNT: \$ \_\_\_\_\_

23. If your answer to Question No. 12 is "YES" and you find that the plaintiff is not entitled to compensatory damages from defendant ALBERT BONNER because of his falsifying evidence against Jeffrey Robinson, then you must award nominal damages in accordance with the instructions given to you.

AMOUNT: \$ \_\_\_\_\_

24. Has the plaintiff shown by clear and convincing evidence that the defendant ALBERT BONNER'S actions in falsifying evidence against Jeffrey Robinson were intentional, reckless, malicious, or fraudulent?

YES \_\_\_\_\_ NO \_\_\_\_\_

#### **IV. Outrageous Conduct**

**(Defendants Lucas, Berryhill, Simcox and Bonner/Post Shooting Claims)**

25. Has the plaintiff proven by a preponderance of the evidence that conduct of defendant MARK LUCAS was extreme and outrageous as those terms have been defined in the instructions given to you?

YES \_\_\_\_\_ NO \_\_\_\_\_

26. Has the plaintiff proven by a preponderance of the evidence that conduct of defendant ANTHONY BERRYHILL was extreme and outrageous as those terms have been defined in the instructions given to you?

YES \_\_\_\_\_ NO \_\_\_\_\_

27. Has the plaintiff proven by a preponderance of the evidence that conduct of defendant JEFFREY SIMCOX was extreme and outrageous as those terms have been defined in the instructions given to you?

YES \_\_\_\_\_ NO \_\_\_\_\_

28. Has the plaintiff proven by a preponderance of the evidence that conduct of defendant ALBERT BONNER was extreme and outrageous as those terms have been defined in the instructions given to you?

YES \_\_\_\_\_ NO \_\_\_\_\_

**Damages/Lucas**

Answer Question No. 29 only if Question No. 25 was answered "YES."

29. Has plaintiff proven by a preponderance of the evidence that Jeffrey Robinson suffered compensatory damages, such as physical injury, emotional pain and suffering, including anguish, distress, fear, humiliation, shame



or worry, which were proximately caused by the outrageous conduct of defendant MARK LUCAS?

YES \_\_\_\_\_ NO \_\_\_\_\_

If your answer to Question No. 29 is "YES," then under the laws as given to you in these instructions, state the amount of compensatory damages that the plaintiff should be awarded from defendant MARK LUCAS because of his outrageous conduct. [If you have already awarded these damages against this defendant, insert the words "already awarded these damages" and state the amount you have already awarded.]

AMOUNT: \$\_\_\_\_\_

#### **Damages/Berryhill**

Answer Question No. 30 only if Question No. 26 was answered "YES."

30. Has plaintiff proven by a preponderance of the evidence that Jeffrey Robinson suffered compensatory damages, such as physical injury, emotional pain and suffering, including anguish, distress, fear, humiliation, shame or worry, which were proximately caused by the outrageous conduct of defendant ANTHONY BERRYHILL?

YES \_\_\_\_\_ NO \_\_\_\_\_

If your answer to Question No. 30 is "YES," then under the laws as given to you in these instructions, state the amount of compensatory damages that the plaintiff should be awarded from defendant ANTHONY BERRYHILL because of his outrageous conduct. [If you have already awarded these damages against this defendant, insert the words "already awarded these damages" and state the amount you have already awarded.]

AMOUNT: \$ \_\_\_\_\_

**Damages/Simcox**

Answer Question No. 31 only if Question No. 27 was answered "YES."

31. Has plaintiff proven by a preponderance of the evidence that Jeffrey Robinson suffered compensatory damages, such as physical injury, emotional pain and suffering, including anguish, distress, fear, humiliation, shame or worry, which were proximately caused by the outrageous conduct of defendant JEFFREY SIMCOX?

YES \_\_\_\_\_ NO \_\_\_\_\_

If your answer to Question No. 31 is "YES," then under the laws as given to you in these instructions, state the amount of compensatory damages that the plaintiff should be awarded from defendant JEFFREY SIMCOX because

of his outrageous conduct. [If you have already awarded these damages against this defendant, insert the words "already awarded these damages" and state the amount that you have already awarded.]

AMOUNT: \$ \_\_\_\_\_

**Damages/Bonner**

Answer Question No. 32 only if Question No. 28 was answered "YES."

32. Has plaintiff proven by a preponderance of the evidence that Jeffrey Robinson suffered compensatory damages, such as physical injury, emotional pain and suffering, including anguish, distress, fear, humiliation, shame or worry, which were proximately caused by the outrageous conduct of defendant ALBERT BONNER?

YES \_\_\_\_\_ NO \_\_\_\_\_

If your answer to Question No. 32 is "YES," then under the laws as given to you in these instructions, state the amount of compensatory damages that the plaintiff should be awarded from defendant ALBERT BONNER because of his outrageous conduct. [If you have already awarded these damages against this defendant, insert the words "already awarded these damages" and state the amount you have already awarded.]

AMOUNT: \$ \_\_\_\_\_

\_\_\_\_\_  
PRESIDING JUROR

\_\_\_\_\_  
DATE

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[Jury Instructions]

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