

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

JAMES CONLIN,

Plaintiff,

v.

CITY OF DES MOINES, IOWA,

Defendant.

* CIVIL NO. 4:12-cv-00608-HCA

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**FINAL
JURY INSTRUCTIONS**

Members of the jury, the instructions I gave at the beginning of the trial and during the trial are still in effect. Now I am going to give you some additional instructions.

You have to follow all of my instructions – the ones I gave you earlier, as well as those I give you now. Do not single out some instructions and ignore others, because they are all important. This is true even though I am not going to repeat some of the instructions I gave you at the beginning of or during the trial. You will have copies of the instructions I am about to give you now in the jury room. Remember, you have to follow all instructions, no matter when I give them, whether or not you have written copies.

I have not intended to suggest what I think your verdict should be by any of my rulings or comments during the trial.

FINAL INSTRUCTION NO. 1

You will have to decide whether certain facts have been proved by the preponderance of the evidence. Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other. You decide that by considering all of the evidence and deciding what evidence is more believable.

You have probably heard the phrase “proof beyond a reasonable doubt.” That is a stricter standard than preponderance of the evidence. It applies in criminal cases, but not in this civil case; so put it out of your mind.

FINAL INSTRUCTION NO. 2

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.

You may consider a witness's intelligence; the opportunity the witness had to see or hear the things testified about; a witness's memory, knowledge, education, and experience; any reasons a witness might have for testifying a certain way; how a witness acted while testifying; whether a witness said something different at another time; whether a witness's testimony sounded reasonable; and whether or to what extent a witness's testimony is consistent with other evidence you believe.

In deciding whether to believe a witness, remember that people sometimes hear or see things differently and sometimes forget things. You will have to decide whether a contradiction is an innocent misrecollection, or a lapse of memory, or an intentional falsehood; that may depend on whether it has to do with an important fact or only a small detail.

FINAL INSTRUCTION NO. 3

You have heard evidence claiming a witness made statements before this trial while under oath which were inconsistent with what the witness said in this trial. If you find these statements were made and were inconsistent, then you may consider them as part of the evidence, just as if they had been made at this trial.

You also may use these statements to help you decide if you believe the witness. You may disregard all or any part of the testimony if you find the statements were made and were inconsistent with the testimony given at trial, but you are not required to do so. Do not disregard the trial testimony if other evidence you believe supports it, or if you believe it for any other reason.

FINAL INSTRUCTION NO. 4

You have heard evidence claiming a witness or party made statements before this trial while not under oath which were inconsistent with what the witness or party said in this trial.

Because the witness or party did not make the earlier statements under oath, you may use them only to help you decide if you believe the witness or party.

Decide if the earlier statements were made and whether they were inconsistent with testimony given at trial. You may disregard all or any part of the testimony if you find the statements were made and they were inconsistent with the testimony given at trial, but you are not required to do so.

Do not disregard the testimony if other evidence you believe supports it or if you believe it for any other reason.

FINAL INSTRUCTION NO. 5

The parties have stipulated - that is, they have agreed - that certain facts are as stated into the record during trial. You should, therefore, treat those facts as having been proved.

FINAL INSTRUCTION NO. 6

You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

An expert witness was asked to assume certain facts were true and to give an opinion based on that assumption. This is called a hypothetical question. If any fact assumed in the question has not been proved by the evidence, you should decide if that omission affects the value of the opinion.

FINAL INSTRUCTION NO. 7

The fact that Defendant is a municipality should not affect your decision. All persons are equal before the law, and corporations or municipalities, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

FINAL INSTRUCTION NO. 8

This matter involves a claim by James Conlin, Plaintiff, against City of Des Moines, Defendant. Mr. Conlin claims that the City of Des Moines, through the actions of the City's Historic Preservation Commission, the City Council and City Staff members, violated his constitutional rights to Equal Protection. Mr. Conlin asserts that he was treated differently by the City of Des Moines, as compared to other property owners similarly situated in the City, due to his identity, stature, financial means, and the timing of his application to the Historic Preservation Commission where he requested approval to install vinyl windows in a property located in Sherman Hill. Mr. Conlin asserts that the City of Des Moines has affirmatively approved similarly situated property owners' requests to install vinyl windows in Sherman Hill. Mr. Conlin further asserts that the City failed to follow its rules and standards when it treated him differently by arbitrarily denying Mr. Conlin's request to install vinyl windows. The City disputes Mr. Conlin's claims.

The elements which Plaintiff must prove to establish this claim will be explained to you in the instructions which follow.

FINAL INSTRUCTION NO. 9

The Fourteenth Amendment of the United States Constitution provides that no government shall "deny to any person within its jurisdiction the equal protection of the laws." The Iowa Constitution has a similar provision. Plaintiff alleges he was treated differently than one or more similarly situated property owner(s) on the basis of his identity, stature, financial means and the timing of his application to the Historic Preservation Commission when the City denied his request to install vinyl windows in a property located in Sherman Hill.

To prevail on his claim of an equal protection violation, Plaintiff must prove all of the following elements by a preponderance of the evidence:

1. Plaintiff is similarly situated to one or more property owner(s) in Sherman Hill for purposes of the challenged government action. In determining whether other property owners are similarly situated, you must find that one or more property owner(s) are identical or directly comparable to the Plaintiff in all material respects;

2. Defendant intentionally treated Plaintiff differently than one or more similarly situated property owner(s) in Sherman Hill because of his identity, stature, financial means or the timing of his application to the Historic Preservation Commission;

3. There is no rational basis for Defendant's difference in treatment;

4. As a direct result, Plaintiff suffered damage.

If you find that Plaintiff has failed to prove any of the above elements by a preponderance of the evidence, your verdict on Plaintiff's equal protection claim must be for Defendant. If you find, however, that Plaintiff has proven all of the above elements by a preponderance of the evidence, then your verdict on Plaintiff's equal protection claim must be for Plaintiff.

FINAL INSTRUCTION NO. 10

If you find in favor of Plaintiff James Conlin under Instruction No. 9, but you do not find that his damages have monetary value, then you must return a verdict for the Plaintiff in the nominal amount of One Dollar (\$1.00).

FINAL INSTRUCTION NO. 11

During the trial, you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these are notes and not evidence. Generally, they reflect the recollection or impressions of the evidence as viewed by the person taking them, and may be inaccurate or incomplete.

Upon reaching a verdict, leave the notes in the jury room, and they will be destroyed.

FINAL INSTRUCTION NO. 12

The exhibits received into evidence in this case will be provided to you in the jury room during your deliberations. You will see that some of the exhibits have portions which are redacted or blacked out. Do not be concerned or speculate about the information which has been removed from these exhibits as the Court has prior to trial ruled that the redacted information is not relevant to the case.

FINAL INSTRUCTION NO. 13

There are rules you must follow when you go to the jury room to deliberate and return with your verdict.

First, you will select a foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement, if you can do this without going against what you believe to be the truth, because all jurors have to agree on the verdict.

Each of you must come to your own decision, but only after you have considered all the evidence, discussed the evidence fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your mind if the discussion persuades you that you should. But, do not come to a decision just because other jurors think it is right, or just to reach a verdict. Remember you are not for or against any party. You are judges – judges of the facts. Your only job is to study the evidence and decide what is true.

Third, if you need to communicate with me during your deliberations, send me a note signed by one or more of you. Give the note to the Court Security Officer and I will answer you as soon as I can, either in writing or here in court. While you are deliberating, do not tell anyone - including me - how many jurors are voting for any side.

Fourth, your verdict has to be based only on the evidence and on the law that I have given to you in my instructions. Nothing I have said or done was meant to suggest what I think your verdict should be. The verdict is entirely up to you.

PAGE TWO OF FINAL INSTRUCTION NO. 13

Finally, I am giving you a verdict form which is your written decision in this case. When you have all agreed on the verdict, your foreperson should complete and date the form. Each juror should then sign the form, indicating your unanimous agreement with the verdict. The foreperson should then place the completed verdict form in the envelope being supplied to you and marked “Verdict.” The foreperson should seal the envelope and deliver it to the Court Security Officer.

Dated August 7, 2015.



HELEN C. ADAMS
UNITED STATES MAGISTRATE JUDGE

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Plaintiff,

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CITY OF DES MOINES, IOWA,

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VERDICT FORM

We, the jury, find the following verdict on the questions submitted to us:

Question No. 1: Did Plaintiff James Conlin prove his state and federal Equal Protection claims, as explained in Instruction No. 9, against Defendant City of Des Moines?

(Answer "yes" or "no").

Answer: Yes

(If your answer to Question No. 1 is "no," do not answer any further questions. The foreperson should sign and date the verdict form. If your answer is "yes," answer the next question.)

Question No. 2: Enter the amount of damage sustained by Plaintiff James Conlin as a result of Defendant City of Des Moines' violation of his Equal Protection rights, as explained in Instruction No. 10.

Answer: \$ 1.00

Marilyn Jones
Karen Mader
Tanya Rumer
Aimee M. HYCK
Kimberly Slycard
Justin Shields
Erica Groom
Nicole Spivey

J. Froelich
FOREPERSON

08-07-15 4:39 PM
DATE AND TIME

Christian Jull
[Signature]