

ORIGINAL

**IN THE 380TH JUDICIAL DISTRICT COURT
THE STATE OF TEXAS
BENJAMIN SMITH, JUDGE PRESIDING
CAUSE NO. 380-00674-2023**

**AARON VANN, AS NEXT FRIEND OF A.V.
AND ASHER VANN
*Plaintiffs***
vs.
**KIM T. COLE
AND SUMMER SMITH
*Defendants***

CHARGE OF THE COURT

MEMBERS OF THE JURY:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the internet. Do not post information about the case on the internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason.

Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the

evidence and not be influenced by the fact that another juror has or has not taken notes.

You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

Here are the instructions for answering the questions.

1. Do not let bias, prejudice or sympathy play any part in your decision.
2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.
3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.
4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.
5. All the questions and answers are important. No one should say that any question or answer is not important.
6. Answer "yes" or "no" to all questions unless you are told otherwise. A "yes" answer must be based on a preponderance of the evidence, unless you are told otherwise. Whenever a question requires an answer other than "yes" or "no," your answer must be based on a preponderance of the evidence, unless you are told otherwise.

The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a "yes" answer, then answer "no." A preponderance of the evidence is not measured by the number of witnesses or by the number of

documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

A fact may be established by direct evidence, circumstantial evidence, or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.

8. Do not answer questions by drawing straws or by any method of chance.

9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.

10. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."

11. Unless otherwise instructed, the answers to the questions must be based on the decision of at least ten of the twelve jurors. The same ten jurors must agree on every answer. Do not agree to be bound by a vote of anything less than ten jurors, even if it would be a majority.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

INSTRUCTIONS FOR QUESTION 1 AND QUESTION 2

Intentional infliction of emotional distress occurs when the defendant acts intentionally or recklessly with extreme and outrageous conduct to cause the plaintiff emotional distress and the emotional distress suffered by the plaintiff was severe.

“Extreme and outrageous conduct” occurs only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized community.

QUESTION 1

Did *Summer Smith* intentionally inflict severe emotional distress on *Asher Vann*?

Answer “Yes” or “No.”

Answer: Yes

QUESTION 2

Did *Kim Cole* intentionally inflict severe emotional distress on *Asher Vann*?

Answer “Yes” or “No.”

Answer: Yes

IF YOU ANSWERED “YES” TO BOTH QUESTION 1 AND QUESTION 2, THEN ANSWER QUESTION 3.

IF YOU ANSWERED “NO” TO EITHER QUESTION 1 OR QUESTION 2, THEN DO NOT ANSWER QUESTION 3.

IF YOU ANSWERED “NO” TO BOTH QUESTION 1 AND QUESTION 2, THEN DO NOT ANSWER QUESTION 3, QUESTION 4, QUESTION 5, OR QUESTION 6.

INSTRUCTIONS FOR QUESTION 3

Assign percentages of responsibility to each person who you found caused or contributed to cause the infliction of severe emotional distress on *Asher Vann*. The percentages you must find must total 100 percent. The percentages must be expressed in whole numbers.

The percentage of responsibility attributed to any one is not necessarily measured by the number of actions or omissions found. The percentage of responsibility attributable to any one need not be the same percentage attributed to that one in answering another question.

QUESTION 3

For each person who you found caused or contributed to cause the infliction of severe emotional distress, find the percentage of responsibility for each:

Summer Smith 50 %

Kim Cole 50 %

Total: 100%

IF YOU ANSWERED “YES” TO EITHER OR BOTH QUESTION 1 AND QUESTION 2, THEN ANSWER QUESTION 4.

IF YOU ANSWERED “NO” TO BOTH QUESTION 1 AND QUESTION 2, THEN DO NOT ANSWER QUESTION 4.

INSTRUCTIONS FOR QUESTION 4

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same type of loss, if any. Do not include interest on any amount of damage you find.

Answer separately, in dollars and cents, for damages, if any. Do not reduce the amounts, if any, in your answers because of the actions or omissions of *Asher Vann*.

Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

QUESTION 4

What sum of money, if paid now in cash, would fairly and reasonably compensate *Asher Vann* for his injuries, if any, that resulted from the infliction of severe emotional distress?

a. Physical pain and mental anguish sustained in the past.

Answer: $\$ 200,000$

b. Physical pain and mental anguish that, in reasonable probability, *Asher Vann* will sustain in the future.

Answer: $\$ 200,000$

c. Medical care expenses incurred in the past.

Answer: $\$ 30,000$

d. Medical care expenses that, in reasonable probability, *Asher Vann* will incur in the future.

Answer: $\$ 100,000$

e. Loss of earning capacity sustained in the past.

Answer: $\$ 20,000$

f. Loss of earning capacity that, in reasonable probability, *Asher Vann* will sustain in the future.

Answer: $\$ 700,000$

g. Injury to *Asher Vann's* reputation in the past.

Answer: $\$ 0$

h. Injury to *Asher Vann's* reputation and the reasonable costs associated with the repair of *Asher Vann's* reputation that, in reasonable probability, will be incurred or sustained in the future.

Answer: **\$ 349,000**

INSTRUCTIONS FOR QUESTION 5

To answer "Yes" to any part of Question 5, your answer must be unanimous. You may answer "No" to any part of Question 5 only upon a vote of ten or more jurors. Otherwise, you must not answer that part of Question 5.

"Clear and convincing evidence" means the measure or degree of proof that procures a firm belief or conviction of the truth of the allegations sought to be established.

"Malice" means a specific intent to cause substantial injury or harm to *Asher Vann*.

QUESTION 5

Do you find by clear and convincing evidence that the infliction of severe emotional distress upon *Asher Vann* resulted from malice?

For each party below, answer "Yes" or "No."

Summer Smith _____

Kim Cole _____

IF YOU UNANIMOUSLY ANSWERED "YES" TO ANY PART OF QUESTION 5, THEN ANSWER QUESTION 6.

IF YOU ANSWERED "NO" TO BOTH PARTS OF QUESTION 6, DO NOT ANSWER QUESTION 6.

INSTRUCTIONS FOR QUESTION 6

“Exemplary damages” means an amount that you may in your discretion award as a penalty or by way of punishment.

You must unanimously agree on the amount of any award of exemplary damages.

Factors to consider in awarding exemplary damages, if any, are:

1. The nature of the wrong.
2. The character or the conduct involved.
3. The degree of culpability of the party against whom exemplary damages are assessed.
4. The situation and sensibilities of the parties concerned.
5. The extent to which such conduct offends a public sense of justice and propriety.
6. The net worth of the party against whom damages are being assessed.

QUESTION 6

What sum of money, if paid now in cash, should be assessed against each party and awarded to *Asher Vann* as exemplary damages, if any, for the infliction of severe emotional distress?

Answer in dollars and cents, if any, for each party.

Summer Smith _____

Kim Cole _____

INSTRUCTIONS FOR QUESTION 7 AND QUESTION 8

“Publicize” means to communicate the information to more than a small group of persons so that the matter is communicated to the public at large, such that the matter becomes one of public knowledge.

You are instructed that *Summer Smith* destroyed and/or failed to preserve messages, posts, and/or comments made on one or more social medial platforms. You are instructed to presume that *Summer Smith* deleted her social media posts and messages, which would prove that she posted identifying information of *Asher Vann* using her social medial accounts.

QUESTION 7

Did *Summer Smith* publicize a matter concerning *Asher Vann*'s private life, the publication of which would be highly offensive to a reasonable person?

Answer "Yes" or "No."

Answer: Yes

QUESTION 8

Did *Kim Cole* publicize a matter concerning *Asher Vann*'s private life, the publication of which would be highly offensive to a reasonable person?

Answer "Yes" or "No."

Answer: Yes

IF YOU ANSWERED "YES" TO BOTH QUESTION 7 AND QUESTION 8, THEN ANSWER QUESTION 9.

IF YOU ANSWERED "NO" TO EITHER QUESTION 7 OR QUESTION 8, THEN DO NOT ANSWER QUESTION 9. NEXT, ANSWER QUESTION 10.

IF YOU ANSWERED "NO" TO BOTH QUESTION 7 AND QUESTION 8, THEN DO NOT ANSWER QUESTION 9, QUESTION 10, QUESTION 11, OR QUESTION 12.

INSTRUCTIONS FOR QUESTION 9

Assign percentages of responsibility to each person who you found caused or contributed to publication of a matter concerning *Asher Vann*'s private life. The

percentages you must find must total 100 percent. The percentages must be expressed in whole numbers.

The percentage of responsibility attributed to any one is not necessarily measured by the number of actions or omissions found. The percentage of attributable to any one need not be the same percentage attributed to that one in answering another question.

QUESTION 9

For each person who you found caused or contributed to cause the publication of a matter concerning *Asher Vann*'s private life, which would be highly offensive to a reasonable person, find the percentage of responsibility for each.

Summer Smith 50 %

Kim Cole 50 %

Total: 100%

IF YOU ANSWERED QUESTION 9, THEN ANSWER QUESTION 10.

IF YOU ANSWERED "YES" TO EITHER OR BOTH QUESTION 7 AND QUESTION 8, THEN ANSWER QUESTION 10.

IF YOU ANSWERED "NO" TO BOTH QUESTION 7 AND QUESTION 8, THEN DO NOT ANSWER QUESTION 10, QUESTION 11, OR QUESTION 12.

INSTRUCTIONS FOR QUESTION 10

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same type of loss, if any. Do not include interest on any amount of damage you find.

Answer separately, in dollars and cents, for damages, if any. Do not reduce the amounts, if any, in your answers because of the actions or omissions of *Asher Vann*.

Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

QUESTION 10

What sum of money, if paid now in cash, would fairly and reasonably compensate *Asher Vann* for his injuries, if any, that resulted from the publication of matters concerning *Asher Vann*'s private life, which would be highly offensive to a reasonable person?

a. Physical pain and mental anguish sustained in the past.

Answer: \$ 200,000

b. Physical pain and mental anguish that, in reasonable probability, *Asher Vann* will sustain in the future.

Answer: \$ 200,000

c. Medical care expenses incurred in the past.

Answer: \$ 30,000

d. Medical care expenses that, in reasonable probability, *Asher Vann* will incur in the future.

Answer: \$ 100,000

e. Loss of earning capacity sustained in the past.

Answer: \$ 20,000

f. Loss of earning capacity that, in reasonable probability, *Asher Vann* will sustain in the future.

Answer: \$ 700,000

g. Injury to *Asher Vann's* reputation in the past.

Answer: \$ 0

h. Injury to *Asher Vann's* reputation and the reasonable costs associated with the repair of *Asher Vann's* reputation that, in reasonable probability, will be incurred or sustained in the future.

Answer: \$ 349,000

IF YOU UNANIMOUSLY ANSWERED "YES" TO QUESTION 7 AND/OR QUESTION 8, THEN ANSWER QUESTION 11. OTHERWISE, DO NOT ANSWER QUESTION 11.

INSTRUCTIONS FOR QUESTION 11

To answer "Yes" to any part of Question 11, your answer must be unanimous. You may answer "No" to any part of Question 11 only upon a vote of ten or more jurors. Otherwise, you must not answer that part of Question 11.

"Clear and convincing evidence" means the measure or degree of proof that procures a firm belief or conviction of the truth of the allegations sought to be established.

"Malice" means a specific intent to cause substantial injury or harm to *Asher Vann*.

QUESTION 11

Do you find by clear and convincing evidence that the publication of matters concerning *Asher Vann's* private life, which would be highly offensive to a reasonable person, resulted from malice?

For each party below, answer "Yes" or "No."

Summer Smith _____

Kim Cole _____

IF YOU ANSWERED "YES" TO ANY PART OF QUESTION 11, THEN ANSWER QUESTION 12.

IF YOU ANSWERED "NO" TO BOTH PARTS OF QUESTION 11, THEN DO NOT ANSWER QUESTION 12.

INSTRUCTIONS FOR QUESTION 12

"Exemplary damages" means an amount that you may in your discretion award as a penalty or by way of punishment.

You must unanimously agree on the amount of any award of exemplary damages.

Factors to consider in awarding exemplary damages, if any, are:

1. The nature of the wrong.
2. The character or the conduct involved.
3. The degree of culpability of the party against whom exemplary damages are assessed.
4. The situation and sensibilities of the parties concerned.
5. The extent to which such conduct offends a public sense of justice and propriety.
6. The net worth of the party against whom damages are being assessed.

QUESTION 12

What sum of money, if paid now in cash, should be assessed against each party and awarded to *Asher Vann* as exemplary damages, if any, for the publication of matters concerning *Asher Vann*'s private life, which would be highly offensive to a reasonable person?

Answer in dollars and cents, if any, for each party.

Summer Smith _____

Kim Cole _____

JURY FOREPERSON

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a foreperson.
2. The foreperson has these duties:
 - a. Have these instructions read aloud if it will be helpful to your deliberations;
 - b. Preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
 - c. Give written questions or comments to the bailiff who will give them to the judge;
 - d. Write down the answers you agree on;
 - e. Get the signatures for the verdict certificate; and
 - f. Notify the bailiff that you have reached a verdict.

INSTRUCTIONS FOR SIGNING THE VERDICT CERTIFICATE

1. You may answer the questions on a vote of ten jurors. The same ten jurors must agree on every answer in the charge. This means you may not have one group of ten jurors agree on one answer and a different group of ten jurors agree on another answer.
2. If ten jurors agree on every answer, those ten jurors sign the verdict. If eleven jurors agree on every answer, those eleven jurors sign the verdict. If all twelve of you agree on every answer, you are unanimous and only the jury foreperson signs the verdict.
3. All jurors should deliberate on every question. You may end up with all twelve of you agreeing on some answers, while only ten or eleven of you agree on other answers. But when you sign the verdict, only those ten or eleven who agree on every answer will sign the verdict.

Signed on 30 October 2025.

Benjamin Smith
PRESIDING JUDGE

VERDICT CERTIFICATE

Check one:

Our verdict is unanimous. All twelve of us have agreed to each and every answer. The foreperson has signed the certificate for all twelve of us.

Foreperson Signature

Foreperson Printed Name

Our verdict is not unanimous. Ten of us have agreed to each and every answer and have signed the certificate below.

✓ Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the certificate below.

Signature

~~W. Hart~~
~~W. Hart~~
S. [REDACTED] Name
Steve [REDACTED] [REDACTED]
Simpson [REDACTED]
Gardner [REDACTED]
Pabla [REDACTED]
W. Hart [REDACTED]
W. Hart [REDACTED]
W. Hart [REDACTED]
W. Hart [REDACTED]

Printed Name

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Request the following
videos:

PE 40 - ABC news

PE 41 - CBS news

PE 42 - WFAA-TV

[REDACTED]
WFAA-TV, FORENSICS