

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF ILLINOIS**

ANGELINA CIANFAGLIONE, )  
)  
Plaintiff, )  
)  
vs. )  
)  
TERRY ROGERS in his individual capacity, )  
DEE BURGIN, in his individual capacity, )  
ROBERT WILSON, in his individual capacity, )  
BEVERLY WEGER, in her individual capacity, )  
And COUNTY OF EDGAR, ILLINOIS, )  
)  
Defendants. )

No. 10-2170

**FILED**  
MAY 18 2012  
CLERK OF THE COURT  
U.S. DISTRICT COURT  
CENTRAL DISTRICT OF ILLINOIS  
URBANA, ILLINOIS

**FINAL PRE-TRIAL ORDER**

This matter comes before the Court at a Final Pre-Trial Conference held pursuant to Rule 16 of the Federal Rules of Civil Procedure and Local Rule 16.3(D); and Jude M. Redwood, as attorney for Plaintiff, Angelina Cianfaglione, and Nathaniel M. Schmitz, as attorney for the Defendants, Dee Burgin, Terry Rogers, Robert Wilson, Beverly Weger, and the County of Edgar, Illinois, the following action was taken.

**I. NATURE OF ACTION AND JURISDICTION**

This is an action brought pursuant to 42 U.S.C. §1983 for alleged violations of Angelina Cianfaglione’s rights under the Fourth Amendment. Ms. Cianfaglione alleges that on August 20, 2008, she was subjected to an unreasonable strip search and body cavity search at the Edgar County Jail. The genesis surrounding Ms. Cianfaglione’s allegations was a stop of Ms. Cianfaglione in her vehicle at or about 6:15 p.m. on August 20, 2008, by Defendants Dee Burgin and Terry Rogers in connection with an unrelated matter.

Ms. Cianfaglione alleges that Mr. Burgin and Mr. Rogers lacked reasonable suspicion to request that a strip and/ or body cavity search be performed on her at the Edgar County Jail on August 20, 2008. Mr. Burgin and Mr. Rogers deny that they lacked reasonable suspicion to request a strip search of Ms. Cianfaglione. In addition, Mr. Burgin and Mr. Rogers deny that they requested a body cavity search be performed on Ms. Cianfaglione at the Edgar County Jail.

Ms. Cianfaglione further alleges that the strip search and/ or body cavity search were unreasonable. Specifically, Ms. Cianfaglione alleges that Defendant Beverly Weger (at the

direction of Mr. Burgin, Mr. Rogers and Defendant Robert Wilson) performed an unreasonable strip/ body cavity search by touching Ms. Cianfaglione on the buttocks, on the vagina, and legs near her vagina and inspected the interior of her anus and vagina with a flashlight. Ms. Weger does not deny that she performed a strip search on Ms. Cianfaglione, however, Ms. Weger denies that the strip search occurred as alleged by Ms. Cianfaglione. Furthermore, Ms. Weger denies she performed a body cavity search on Ms. Cianfaglione and denies that she had any physical contact with Ms. Cianfaglione. Mr. Wilson also denies Ms. Cianfaglione's allegation that he directed Ms. Weger to perform the alleged strip/ body cavity search.

The focus of this action is twofold:

- 1) Was there reasonable suspicion to conduct a strip search of Ms. Cianfaglione for contraband?
- 2) If there was reasonable suspicion to conduct a strip search, was the scope of the search conducted by Ms. Weger at the Edgar County Jail unconstitutional?

## **II. JOINT STATEMENT**

### **A. JURISDICTION**

This Court has original jurisdiction over this case under 28 U.S.C. §1331. The jurisdiction of this Court is not disputed.

### **B. UNCONTESTED ISSUES OF FACT**

1. Angelina Cianfaglione was stopped on August 20, 2008, at approximately 6:15 p.m. for the purpose of arresting her on a bench warrant for her arrest that was the result of her failure to appear in the Circuit Court of Edgar County for a hearing on a traffic ticket.
2. Defendants Dee Burgin and Terry Rogers requested a strip search be performed on Ms. Cianfaglione on August 20, 2008, at the Edgar County Jail.
3. Defendant Beverly Weger performed a strip search on Ms. Cianfaglione on August 20, 2008, at the Edgar County Jail.
4. No illegal narcotics or contraband were found in Ms. Cianfaglione's vehicle or on her person by Mr. Burgin or Mr. Rogers on August 20, 2008.
5. No illegal narcotics or contraband were found on Ms. Cianfaglione's person as a result of the strip search.

**C. CONTESTED ISSUES OF FACT**

1. Whether the narcotic detector dog “AJ” employed by the Edgar County Sheriff’s Department made an “alert” on Angelina Cianfaglione and /or her vehicle on August 20, 2008.
2. Whether Defendants Dee Burgin and Terry Rogers searched Ms. Cianfaglione’s car, her purse, her cell phone, and a little notebook that was in her purse.
3. Whether after the search of Ms. Cianfaglione’s car and personal possessions, she was arrested on the warrant and, at the orders of Mr. Burgin and Mr. Rogers, she was transported to the Edgar County Jail in handcuffs and put into a holding cell at about 6:40 p.m.
4. Whether Ms. Cianfaglione informed the personnel at the Edgar County Jail that she had the money to bond out on the warrant and that she wanted to immediately pay the \$400.00 bond and leave the jail.
5. Whether Ms. Cianfaglione was not allowed to bond out at that time.
6. Whether Defendants Dee Burgin and Terry Rogers requested a body cavity search be performed on Ms. Cianfaglione on August 20, 2008, at the Edgar County Jail.
7. Whether Defendant Robert Wilson directed Defendant Beverly Weger to perform a strip search on Ms. Cianfaglione on August 20, 2008, at the Edgar County Jail.
8. Whether Mr. Wilson directed Ms. Weger to perform a body cavity search on Ms. Cianfaglione on August 20, 2008, at the Edgar County Jail.
9. Whether Ms. Weger’s strip search of Ms. Cianfaglione on August 20, 2008, at the Edgar County Jail occurred as alleged by Ms. Cianfaglione.
10. Whether Ms. Weger performed a body cavity search of Ms. Cianfaglione on August 20, 2008, at the Edgar County Jail as alleged by Ms. Cianfaglione.
11. Whether at or about 10:09 p.m. Ms. Cianfaglione was removed from the holding cell and posted bond of \$400.00, as required on the arrest warrant and was allowed to leave the Edgar County Jail.

**D. UNCONTESTED ISSUES OF LAW**

1. Defendants were acting under color of state law at all relevant times hereto.

**E. CONTESTED ISSUES OF LAW**

1. Whether Defendants Dee Burgin and Terry Rogers had reasonable suspicion to request a strip search be performed on Plaintiff Angelina Cianfaglione on August 20, 2008, at the Edgar County Jail.
2. Whether Defendants violated Plaintiff's Fourth Amendment Rights.
3. Whether the Defendants are entitled to qualified immunity.
4. Whether Plaintiff is entitled to compensatory damages.
5. Whether Plaintiff is entitled to punitive damages.

**F. JURY DEMAND**

1. The parties agree that this cause will be a jury trial.

**III. PLAINTIFF'S ITEMIZED STATEMENT OF DAMAGES**

1. Compensatory damages.
2. Punitive damages to punish the Defendants for their conduct and to deter similar conduct in the future.
3. Attorney's Fees and Costs pursuant to 42 U.S.C. § 1988.

**IV. EXHIBITS ATTACHED**

**Exhibit A – Witness List for Plaintiff**  
**Exhibit B – Witness List for Defendants**  
**Exhibit C – Exhibit List for Plaintiff**  
**Exhibit D – Exhibit List for Defendants**

DUE TO PRIVACY ISSUES THE WITNESS  
LISTS HAVE BEEN REMOVED FROM THE  
FINAL PRETRIAL ORDER

THE WITNESS LISTS WILL BE MAILED  
CONVENTIONALLY TO ATTORNEYS OF  
RECORD AND/OR PRO SE PARTIES

**EXHIBIT C****EXHIBIT LIST FOR PLAINTIFF**

Case Name: Cianfaglione v. Rogers, et al.,	Case No.: 10-cv-2170	Page 1 of 1
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No.	Description	Admit Without Objection	Authentication Waived	Objection
1	Docket Sheet Edgar County Case 08-TR-793			X
2	Bail Bond Form Edgar County Case 08-TR-793			
3	Certified Copy Warrant of Arrest – Edgar County Case 08-TR-793			X

**EXHIBIT D****EXHIBIT LIST FOR DEFENDANTS**

Case Name: Cianfaglione v. Rogers, et al.,	Case No.: 10-cv-2170	Page 1 of 1
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No.	Description	Admit Without Objection	Authentication Waived	Objection
1	Edgar County Jailers Log – August 20, 2008, 4:00 p.m. through August 20, 2008, 10:40 p.m.			
2	Paris Police Department Daily Activity Report – August 20, 2008, 17:46 through August 20, 2008, 21:32.			
3	Edgar County Sheriff's Dispatch Log/ Confidential – August 14, 2008, 00:00 through August 20, 2008, 23:56.			
4	Edgar County Jailnet Report – August 20, 2008			
5	Edgar County Sheriff's Department Records concerning narcotic detector dog "AJ"			

V. GENERAL ADDITIONAL

The following additional action was taken:

**IT IS FURTHER UNDERSTOOD BY THE PARTIES THAT:**

The Parties have not disclosed the name or qualifications of any expert witnesses, and thus will not call as a witness any expert.

Any Trial Briefs or Motions in Limine shall be submitted as directed by this Court but in no event ~~less than five (5) days prior to the commencement of that trial.~~ *Following May 25, 2012*

A party may supplement a list of witnesses or exhibits only upon good cause shown in a motion filed and served upon the other parties prior to trial; except that, upon the development of testimony fairly shown to be unexpected, any party may, with leave of court, call such contrary witnesses or use such exhibits as may be necessary to counter the unexpected evidence, although not previously listed, and without prior notice of any other party.

It is mutually estimated that the length of trial will not exceed five (5) full days. The case will be listed on the trial calendar to be tried when reached.

Once a final version of this order has been approved by the Court, it may be modified at the trial of the action, or prior thereto, only to prevent manifest injustice. Such modification may be made either on motion of counsel for any party or on the Court's own motion.

Any additional proposed jury instructions shall be submitted to the Court within five days before the commencement of the trial, but there is reserved to counsel for the respective parties the right to submit supplemental proposals for instructions during the course of the trial or at the conclusion of the evidence on matters that could not reasonably have been anticipated.

ENTERED: May 18, 2012.

s/ Michael P. McCuskey

\_\_\_\_\_  
Hon. Michael P. McCuskey



APPROVED:   
s/Jude M. Redwood

\_\_\_\_\_  
Jude M. Redwood  
Attorney for Plaintiff

s/Nathaniel M. Schmitz

\_\_\_\_\_  
Nathaniel M. Schmitz  
Attorney for Defendants





Members of the jury, you have seen and heard all the evidence and arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

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

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

Agreed Instruction No. 1  
7<sup>th</sup> Circuit Pattern Instruction 1.01

Given \_\_\_\_\_

Refused \_\_\_\_\_

Withdrawn \_\_\_\_\_

During this trial, I have asked a witness a question myself. Do not assume that because I asked questions I hold any opinion on the matters I asked about, or on what the outcome of the case should be.

Agreed Instruction No. 2  
7<sup>th</sup> Circuit Pattern Instruction 1.02

Given \_\_\_\_\_

Refused \_\_\_\_\_

Withdrawn \_\_\_\_\_

The evidence consists of the testimony of the parties, witnesses, the exhibits admitted in evidence, and stipulations

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

I have taken judicial notice of certain facts. You must accept those facts as proved.

Agreed Instruction No. 3  
7<sup>th</sup> Circuit Pattern Instruction 1.04

Given \_\_\_\_\_

Refused \_\_\_\_\_

Withdrawn \_\_\_\_\_

Certain things are not to be considered as evidence. I will list them for you:

First, if I told you to disregard any testimony or exhibits or struck any testimony or exhibits from the record, such testimony or exhibits are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, Internet or television reports you may have seen or heard. Such reports are not evidence and your verdict must not be influenced in any way by such publicity.

Third, questions and objections or comments by the lawyers are not evidence. Lawyers have a duty to object when they believe a question is improper. You should not be influenced by any objection, and you should not infer from my rulings that I have any view as to how you should decide the case.

Fourth, the lawyers' opening statements and closing arguments to you are not evidence. Their purpose is to discuss the issues and evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

Agreed Instruction No. 4  
7<sup>th</sup> Circuit Pattern Instruction 1.06

Given \_\_\_\_\_

Refused \_\_\_\_\_

Withdrawn \_\_\_\_\_

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

Agreed Instruction No. 5  
7<sup>th</sup> Circuit Pattern Instruction 1.07

Given \_\_\_\_\_

Refused \_\_\_\_\_

Withdrawn \_\_\_\_\_

In determining whether any fact has been proved, you should consider all of the evidence bearing on the question regardless of who introduced it.

Agreed Instruction No. 6  
7<sup>th</sup> Circuit Pattern Instruction 1.08

Given \_\_\_\_\_

Refused \_\_\_\_\_

Withdrawn \_\_\_\_\_

You will recall that during the course of this trial I instructed you that I admitted certain evidence for a limited purpose. You must consider this evidence only for the limited purpose for which it was admitted.

Agreed Instruction No. 7  
7<sup>th</sup> Circuit Pattern Instruction 1.09

Given \_\_\_\_\_

Refused \_\_\_\_\_

Withdrawn \_\_\_\_\_

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this “inference.” A jury is allowed to make reasonable inferences. Any inference you make must be reasonable and must be based on the evidence in the case.

Agreed Instruction No. 8  
7<sup>th</sup> Circuit Pattern Instruction 1.11

Given \_\_\_\_\_

Refused \_\_\_\_\_

Withdrawn \_\_\_\_\_



You may have heard the phrases “direct evidence” and “circumstantial evidence.” Direct evidence is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact. Circumstantial evidence is proof of a fact, or a series of facts, that tends to show that some other fact is true.

As an example, direct evidence that it is raining is testimony from a the witness who says, “I was outside a minute ago and I saw it raining.” Circumstantial evidence that it is raining is the observation of someone entering a room carrying a wet umbrella.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should decide how much weight to give to any evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

Agreed Instruction No. 9  
7<sup>th</sup> Circuit Pattern Instruction 1.12

Given \_\_\_\_\_

Refused \_\_\_\_\_

Withdrawn \_\_\_\_\_

You must decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also must decide what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, including any party to the case, you may consider, among other things:

- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- any interest, bias, or prejudice the witness may have;
- the witness's intelligence;
- the manner of the witness while testifying;
- The witness's age;
- and the reasonableness of the witness's testimony in light of all the evidence in the case.

Agreed Instruction No. 10  
7<sup>th</sup> Circuit Pattern Instruction 1.13

Given \_\_\_\_\_

Refused \_\_\_\_\_

Withdrawn \_\_\_\_\_

You may consider statements given by any party or witness under oath before trial as evidence of the truth of what he or she said in the earlier statements, as well as in deciding what weight to give his or her testimony.

With respect to other witnesses, the law is different. If you decide that, before the trial, one of these witnesses made a statement, not under oath, that is inconsistent with his or her testimony here in court, you may consider the earlier statement only in deciding whether his or her testimony here in court was true and what weight to give to his or her testimony here in court.

In considering a prior inconsistent statement, you should consider whether it was simply an innocent error or an intentional falsehood and whether it concerns an important fact or an unimportant detail.

Agreed Instruction No. 11  
7<sup>th</sup> Circuit Pattern Instruction 1.14

Given \_\_\_\_\_

Refused \_\_\_\_\_

Withdrawn \_\_\_\_\_

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

Agreed Instruction No. 12  
7<sup>th</sup> Circuit Pattern Instruction 1.17

Given \_\_\_\_\_

Refused \_\_\_\_\_

Withdrawn \_\_\_\_\_

You must give separate consideration to each claim and each party in this case. Although there are four defendants (Dee Burgin, Terry Rogers, Robert Wilson, and Beverly Weger), it does not follow that if one is liable, any of the others is also liable.

In considering a claim against a defendant, you must not consider evidence admitted only against other defendants or only as to other claims.

Agreed Instruction No. 13  
7<sup>th</sup> Circuit Pattern Instruction 1.25

Given \_\_\_\_\_

Refused \_\_\_\_\_

Withdrawn \_\_\_\_\_

When I say a particular party must prove something by “a preponderance of the evidence,” or when I use the expression “if you find,” or “if you decide,” this is what I mean: When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

Agreed Instruction No. 14  
7<sup>th</sup> Circuit Pattern Instruction 1.27

Given \_\_\_\_\_

Refused \_\_\_\_\_

Withdrawn \_\_\_\_\_

The parties agree in this case that Defendants Rogers, Burgin, Wilson and Weger were acting under color of law at all relevant times. Accordingly, I instruct you that this requirement has been satisfied and you need not give any consideration.

Agreed Instruction No. 15

Given \_\_\_\_\_

Refused \_\_\_\_\_

Withdrawn \_\_\_\_\_

If you find that Plaintiff has proved either of her claim(s) against any of the Defendant(s), then you must determine what amount of damages, if any, Plaintiff is entitled to recover.

If you find that Plaintiff has failed to prove ~~all~~ of her claims, then you will not consider the question of damages.

Agreed Instruction No. 16  
7<sup>th</sup> Circuit Pattern Instruction 7.22

Given \_\_\_\_\_

Refused \_\_\_\_\_

Withdrawn \_\_\_\_\_



I do not anticipate that you will need to communicate with me. If you do need to communicate with me, the only proper way is in writing. The writing must be signed by the presiding juror, or, if he or she is unwilling to do so, by some other juror. The writing should be given to the marshal, who will give it to me. I will respond either in writing or by having you return to the courtroom so that I can respond orally.

If you do communicate with me, you should not indicate in your note what your numerical division is, if any.

Agreed Instruction No. 17  
7<sup>th</sup> Circuit Pattern Instruction 1.33

Given \_\_\_\_\_

Refused \_\_\_\_\_

Withdrawn \_\_\_\_\_

Upon retiring to the jury room, you must select a presiding juror. The presiding juror will preside over your deliberations and will be your representative here in court.

Forms of verdict have been prepared for you.  
Forms of verdict read.

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

Agreed Instruction No. 18  
7<sup>th</sup> Circuit Pattern Instruction 1.32

Given \_\_\_\_\_

Refused \_\_\_\_\_

Withdrawn \_\_\_\_\_

The verdict must represent the considered judgment of each juror. Your verdict, whether for or against the parties, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to reexamine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of other jurors or for the purpose of returning a unanimous verdict.

All of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror. You are the impartial judges of the facts.

Agreed Instruction No. 19  
7<sup>th</sup> Circuit Pattern Instruction 1.24

Given \_\_\_\_\_

Refused \_\_\_\_\_

Withdrawn \_\_\_\_\_

The testimony of a police officer is entitled to no special treatment. A police officer who takes the stand subjects his testimony to the same examination and the same standards as any other witness, and the fact that he is a police officer plays no part in applying standards. People employed by the government, including policemen, do not stand in any higher or lower station in the community than other persons, and their testimony is not entitled to any greater or lesser weight by reason of their occupations. *Wallace v. City of Evanston*, 1990 WL 205942, \*1 (N.D.Ill.)

Plaintiff's Instruction No. 1

*Wallace v. City of Evanston*, 1990 WL 205942, \*1 (N.D.Ill.)

Given \_\_\_\_\_

Refused \_\_\_\_\_

Withdrawn \_\_\_\_\_

Allen Bell was mentioned at trial but did not testify. You may, but are not required to, assume that Allen Bell's testimony would have been unfavorable to Defendant.

Plaintiff's Instruction No. 2  
7<sup>th</sup> Circuit Pattern Instruction 1.19

Given \_\_\_\_\_

Refused \_\_\_\_\_

Withdrawn \_\_\_\_\_

The Plaintiff brings her claims under the federal statute, 42 United States Code §1983, which provides that any person or persons who, under color of law, deprives another of rights, privileges, or immunities secured by the Constitution or laws of the United States shall be liable to the injured party.

Plaintiff's Instruction No. 3

42 U.S.C. Section 1983

Given \_\_\_\_\_

Refused \_\_\_\_\_

Withdrawn \_\_\_\_\_

Plaintiff contends that defendants Rogers, Burgin and Wilson caused defendant Weger to strip search plaintiff.

A visual strip search involves the removal of clothing and the inspection of a female arrestee's vagina and anus. Before a police officer may cause a person to be strip searched, the Fourth Amendment to the Constitution of the United States requires that the officer have a "reasonable suspicion" that the search will turn up drugs, narcotics, or other contraband.

As her First Claim, plaintiff contends that defendants Rogers, Burgin and Wilson did not have a "reasonable suspicion" to cause plaintiff to be strip-searched. Defendants Rogers and Burgin agree that they caused plaintiff to be strip searched but contend that they had "reasonable suspicion" to cause the search. Defendant Wilson denies that he caused defendant Weger to strip search plaintiff.

A suspicion is reasonable when it is based on facts that would cause a reasonable person to believe that an inspection of the arrestee's vagina or anus will turn up drugs, narcotics, or other contraband.

I instruct you that "reasonable suspicion" means more than a hunch or general suspicion that the Plaintiff may have been concealing contraband.

If you find that defendants Rogers, Burgin and Wilson had a reasonable suspicion to cause plaintiff to be strip searched, then your verdict on this claim should be in favor of defendants Rogers, Burgin and Wilson and against plaintiff. If, on the other hand, you find that Rogers, Burgin and/or Wilson did not have a reasonable suspicion to cause the plaintiff to be strip searched, your verdict should be in favor of plaintiff and you should then turn to the amount of damages to award to plaintiff against defendants Rogers, Burgin and/or Wilson.

As her Second Claim, plaintiff contends that defendant Weger, at the direction of defendants Rogers, Burgin and Wilson, subjected plaintiff to a digital, body cavity search, in which defendant Weger touched and spread plaintiff's vagina and anus. Defendant Weger denies that she conducted this type of search. Defendant Rogers, Burgin and Wilson deny that they caused Weger to conduct a digital body cavity search.

A digital body cavity search would be unreasonable under the Fourth Amendment to the Constitution of the United States.

If you find that defendant Weger conducted a digital body cavity search, then you should consider whether defendant Rogers, Burgin and Wilson caused defendant Weger to conduct this type of search. Your verdict should be in favor of plaintiff and against defendant Weger if you find that defendant Weger conducted a digital body cavity search. Your verdict should be in favor of plaintiff and against defendants Rogers, Burgin and Wilson if you find that these defendants caused defendant Weger to conduct a digital body cavity search. You should then consider the amount of damages to award.

If, however, you find that plaintiff has failed to prove that defendant Weger conducted a digital body cavity search, your verdict on this claim should be in favor of defendants Weger, Rogers, Burgin and Wilson and against plaintiff and you will not consider damages.

Plaintiff's Instruction No. 4

*Mary Beth G. v. City of Chicago*, 723 F.2d 1263 (7<sup>th</sup> Cir. 1983); *Tinetti v. Wittke*, 620 F.2d 160 (7<sup>th</sup> Cir. 1980); *Terry v. Ohio*, 392 U.S. 1, 22, 27 (1968)(rejecting “inchoate and unparticularized suspicion” and “inarticulate hunches”).

Given \_\_\_\_\_

Refused \_\_\_\_\_

Withdrawn \_\_\_\_\_



The Fourth Amendment prohibition against unreasonable search continues to apply after an arrestee is in the custody of the arresting officers.

Plaintiff's Instruction No. 5

*Williams v. Rodriguez*, 509 F.3d 293, (7<sup>th</sup> Cir. 2007); *Fontana v. Haskin*, 262 F.3d 871, 879 (9<sup>th</sup> Cir. 2001)(citing *Albright v. Oliver*, 510 U.S. 266, 277, 114 S.Ct. 807 (1994)(Ginsburg, J., concurring)

Given \_\_\_\_\_

Refused \_\_\_\_\_

Withdrawn \_\_\_\_\_

A person's mere propinquity to others independently suspected fo criminal activity does not, without more, give rise to reasonable suspicion to search, and reasonable suspicion must be particularized with respect to a specific person.

Plaintiff's Instruction No. 6

*Ybarra v. Illinois*, 444 U.S. 85, 91, 100 S.Ct. 338, 342 (1979); *Rakas v. Illinois*, 439 U.S. 128, 138-43, 99 S.Ct. 421 (1978); *Katz v. U.S.*, 389 U.S. 347, 351-52, 88 S.Ct. 507 (1967); *U.S. v. Lee*, 317 F.3d 26, 32 (1<sup>st</sup> Cir. 2003).

Given \_\_\_\_\_

Refused \_\_\_\_\_

Withdrawn \_\_\_\_\_

If you find in favor of Plaintiff, then you must determine the amount of money that will fairly compensate Plaintiff for any injury that you find she sustained and is reasonably certain to sustain in the future as a direct result of the strip/body cavity search she was subjected to. These are called “compensatory damages”.

Plaintiff must prove her damages by a preponderance of the evidence. Your award must be based on evidence and not speculation or guesswork. This does not mean, however, that compensatory damages are restricted to the actual loss of money; they include both the physical and mental aspects of injury, even if they are not easy to measure.

You should consider the following types of compensatory damages, and no others:

The physical and mental/emotional pain and suffering and disability/loss of a normal life that Plaintiff has experienced and is reasonably certain to experience in the future. No evidence of the dollar value of physical or mental/emotional pain and suffering or disability/loss of a normal life has been or needs to be introduced. There is no exact standard for setting the damages to be awarded on account of pain and suffering. You are to determine an amount that will fairly compensate the Plaintiff for the injury she has sustained.

Plaintiff’s Instruction No. 7

7<sup>th</sup> Circuit Pattern Instruction 7.23 modified

Given \_\_\_\_\_

Refused \_\_\_\_\_

Withdrawn \_\_\_\_\_

The term “emotional distress” means mental distress, mental suffering or mental anguish. It includes all highly unpleasant mental reactions, such as fright, nervousness, grief, anxiety, worry, mortification, shock, humiliation and indignity, as well as physical pain.

Plaintiff's Instruction No. 8

*Johnson v. Arroyo*, 2010 WL 1195330 (N.D.Ill.)

Given \_\_\_\_\_

Refused \_\_\_\_\_

Withdrawn \_\_\_\_\_

If you find for Plaintiff, you may, but are not required to, assess punitive damages against one or more Defendant(s). The purposes of punitive damages are to punish a defendant for his or her conduct and to serve as an example or warning to Defendant and others not to engage in similar conduct in the future.

Plaintiff must prove that punitive damages should be assessed against that particular Defendant(s) and each defendant should receive separate consideration. You may assess punitive damages only if you find that his or her conduct was malicious or in reckless disregard of Plaintiff's rights. Conduct is malicious if it is accompanied by ill will or spite, or is done for the purpose of injuring Plaintiff. Conduct is in reckless disregard of Plaintiff's rights if, under the circumstances, it reflects complete indifference to Plaintiff's safety or rights.

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

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

Plaintiff's Instruction No. 9

7<sup>th</sup> Circuit Pattern Instruction 7.24 modified

Given \_\_\_\_\_

Refused \_\_\_\_\_

Withdrawn \_\_\_\_\_

The questions and answers you have just heard were permitted only to help you decide what this witness really knew about the reputations of Dee Burgin and Terry Rogers for truthfulness. You may not use the questions and answers you have just heard for any other purpose.

Plaintiff's Instruction No. 10

7<sup>th</sup> Circuit Pattern Instruction 2.10 modified

Given \_\_\_\_\_

Refused \_\_\_\_\_

Withdrawn \_\_\_\_\_

Each party is entitled to have the case decided solely on the evidence that applies to that party. You must only consider the evidence that applies in the case against Dee Burgin. You must not consider it against any other party.

Defendant's No. 1 7th Cir. Pattern Jury Instruction 1.10 (modified) <i>United States v. Cochran</i> , 955 F.2d 1116, 1120-1121 (7th Cir. 1992)	Given _____ Given as Modified _____ Refused _____ Withdrawn _____
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Each party is entitled to have the case decided solely on the evidence that applies to that party. You must only consider the evidence that applies in the case against Terry Rogers. You must not consider it against any other party.

Defendant's No. 2 7th Cir. Pattern Jury Instruction 1.10 (modified) <i>United States v. Cochran</i> , 955 F.2d 1116, 1120-1121 (7th Cir. 1992)	Given _____ Given as Modified _____ Refused _____ Withdrawn _____
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Each party is entitled to have the case decided solely on the evidence that applies to that party. You must only consider the evidence that applies in the case against Robert Wilson. You must not consider it against any other party.

Defendant's No. 3 7th Cir. Pattern Jury Instruction 1.10 (modified) <i>United States v. Cochran</i> , 955 F.2d 1116, 1120-1121 (7th Cir. 1992)	Given _____ Given as Modified _____ Refused _____ Withdrawn _____
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Each party is entitled to have the case decided solely on the evidence that applies to that party. You must only consider the evidence that applies in the case against Beverly Weger. You must not consider it against any other party.

Defendant's No. 4 7th Cir. Pattern Jury Instruction 1.10 (modified) <i>United States v. Cochran</i> , 955 F.2d 1116, 1120-1121 (7th Cir. 1992)	Given _____ Given as Modified _____ Refused _____ Withdrawn _____
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You have heard evidence that [name] has been convicted of a crime. You may consider this evidence only in deciding whether [name's] testimony is truthful in whole, in part, or not at all. You may not consider this evidence for any other purpose.

Defendant's No. 5 7th Cir. Pattern Jury Instruction 1.15 <i>Young v. James Green Management, Inc.</i> , 327 F.3d 616, 625-626 (7th Cir. 2003)	Given _____ Given as Modified _____ Refused _____ Withdrawn _____
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It is proper for a lawyer to meet with any witness in preparation for trial.

Defendant's No. 6 7th Cir. Pattern Jury Instruction 1.16	Given _____ Given as Modified _____ Refused _____ Withdrawn _____
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The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.

Defendant's No. 7 7th Cir. Pattern Jury Instruction 1.18	Given _____ Given as Modified _____ Refused _____ Withdrawn _____
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If you decide for the Defendant(s) on the question of liability, then you should not consider the question of damages.

Defendant's No. 8 7th Cir. Pattern Jury Instruction 1.31	Given _____ Given as Modified _____ Refused _____ Withdrawn _____
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We are about to take our first break during the trial, and I want to remind you of the instruction I gave you earlier. Until the trial is over, you are not to discuss this case with anyone, including your fellow jurors, members of your family, people involved in the trial, or anyone else. If anyone approaches you and tries to talk to you about the case, do not tell your fellow jurors but advise me about it immediately. Do not read or listen to any news reports of the trial. Finally, remember to keep an open mind until all the evidence has been received and you have heard the views of your fellow jurors.

I may not repeat these things to you before every break that we take, but keep them in mind throughout the trial.

Defendant's No. 9 7th Cir. Pattern Jury Instruction 2.01	Given _____ Given as Modified _____ Refused _____ Withdrawn _____
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I understand that reports about this trial or about this incident are appearing in the newspapers or on radio and television and the internet. The reporters may not have heard all the testimony as you have, may be getting information from people whom you will not see here under oath and subject to cross examination, may emphasize an unimportant point, or may simply be wrong.

You must not read anything or listen to anything or watch anything with regard to this trial. It would be a violation of your oath as jurors to decide this case on anything other than the evidence presented at trial and your common sense. You must decide the case solely and exclusively on the evidence that will be received here in court.

Defendant's No. 10 7th Cir. Pattern Jury Instruction 2.02	Given _____ Given as Modified _____ Refused _____ Withdrawn _____
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Some of the evidence in this case is limited to one of the parties, and cannot be considered against the others. Each party is entitled to have the case decided solely on the evidence which applies to that party.

The evidence you [are about to hear] [just heard] can be considered only in the case against [*name party*].

Defendant's No. 11 7th Cir. Pattern Jury Instruction 2.03	Given _____ Given as Modified _____ Refused _____ Withdrawn _____
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I have a duty to caution or warn an attorney who does something that I believe is not in keeping with the rules of evidence or procedure. You are not to draw any inference against the side whom I may caution or warn during the trial.

Defendant's No. 12 7th Cir. Pattern Jury Instruction 2.14	Given _____ Given as Modified _____ Refused _____ Withdrawn _____
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Defendant(s) are being sued as individuals. Neither the Edgar County Sherriff's Department, City of Paris Police Department, nor Edgar County is a party to this lawsuit.

<p>Defendant's No. 13 7th Cir. Pattern Jury Instruction 7.01 <i>Monell v. City of New York Dep't of Soc. Svcs.</i>, 436 U.S. 658, 691, 694 (1970); <i>Duckworth v.</i> <i>Franzen</i>, 780 F.2d 645, 650-651 (7th Cir. 1985)</p>	<p>Given _____ Given as Modified _____ Refused _____ Withdrawn _____</p>
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Plaintiff must prove by a preponderance of the evidence that Dee Burgin was personally involved in the conduct that Plaintiff complains about. You may not hold Dee Burgin liable for what other individuals did or did not do.

<p>Defendant's No. 14 7th Cir. Pattern Jury Instruction 7.02 (modified) <i>Walker v. Rowe</i>, 791 F.2d 507, 508 (7th Cir. 1986); <i>Duckworth v. Franzen</i>, 780 F.2d 645, 650 (7th Cir. 1985).</p>	<p>Given _____ Given as Modified _____ Refused _____ Withdrawn _____</p>
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Plaintiff must prove by a preponderance of the evidence that Terry Rogers was personally involved in the conduct that Plaintiff complains about. You may not hold Terry Rogers liable for what other individuals did or did not do.

<p>Defendant's No. 15 7th Cir. Pattern Jury Instruction 7.02 (modified) <i>Walker v. Rowe</i>, 791 F.2d 507, 508 (7th Cir. 1986); <i>Duckworth v. Franzen</i>, 780 F.2d 645, 650 (7th Cir. 1985).</p>	<p>Given _____ Given as Modified _____ Refused _____ Withdrawn _____</p>
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Plaintiff must prove by a preponderance of the evidence that Robert Wilson was personally involved in the conduct that Plaintiff complains about. You may not hold Robert Wilson liable for what other individuals did or did not do.

<p>Defendant's No. 16 7th Cir. Pattern Jury Instruction 7.02 (modified) <i>Walker v. Rowe</i>, 791 F.2d 507, 508 (7th Cir. 1986); <i>Duckworth v. Franzen</i>, 780 F.2d 645, 650 (7th Cir. 1985).</p>	<p>Given _____ Given as Modified _____ Refused _____ Withdrawn _____</p>
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Plaintiff must prove by a preponderance of the evidence that Beverly Weger was personally involved in the conduct that Plaintiff complains about. You may not hold Weger liable for what other individuals did or did not do.

<p>Defendant's No. 17 7th Cir. Pattern Jury Instruction 7.02 (modified) <i>Walker v. Rowe</i>, 791 F.2d 507, 508 (7th Cir. 1986); <i>Duckworth v. Franzen</i>, 780 F.2d 645, 650 (7th Cir. 1985).</p>	<p>Given _____ Given as Modified _____ Refused _____ Withdrawn _____</p>
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You have heard evidence about whether Defendant's conduct complied with or violated a state statute/administrative rule or locally-imposed procedure or regulation. You may consider this evidence in your deliberations. But remember that the issue is whether Defendants had reasonable suspicion to conduct a strip search of Plaintiff for contraband, and, if there was reasonable suspicion to conduct a strip search, was the scope of the search conducted by Defendant at the Edgar County Jail unconstitutional, not whether a statute/rule/procedure/regulation might have been complied with or violated.

Defendant's No. 18 7th Cir. Pattern Jury Instruction 7.04 (modified) <i>Shango v. Jurich</i> , 681 F.2d 1091, 1101 (7th Cir. 1982); <i>Doe v. Milwaukee County</i> , 903 F.2d 499, 502 (7th Cir. 1990).	Given _____ Given as Modified _____ Refused _____ Withdrawn _____
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If you find in favor of Plaintiff, then you must determine the amount of money that will fairly compensate Plaintiff for any injury that you find she sustained and is reasonably certain to sustain in the future as a direct result of the strip search and/ or body cavity search. These are called “compensatory damages”.

Plaintiff must prove her damages by a preponderance of the evidence. Your award must be based on evidence and not speculation or guesswork. This does not mean, however, that compensatory damages are restricted to the actual loss of money; they include both the physical and mental aspects of injury, even if they are not easy to measure.

You should consider the following types of compensatory damages, and no others:

The physical and mental/emotional pain and suffering and disability/loss of a normal life that Plaintiff has experienced and is reasonably certain to experience in the future. No evidence of the dollar value of physical or mental/emotional pain and suffering or disability/loss of a normal life has been or needs to be introduced. There is no exact standard for setting the damages to be awarded on account of pain and suffering. You are to determine an amount that will fairly compensate the Plaintiff for the injury he has sustained.

If you find in favor of Plaintiff but find that the plaintiff has failed to prove compensatory damages, you must return a verdict for Plaintiff in the amount of one dollar (\$1.00).

Defendant's No. 19 7th Cir. Pattern Jury Instruction 7.23	Given _____ Given as Modified _____ Refused _____ Withdrawn _____
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If you find for Plaintiff, you may, but are not required to, assess punitive damages against Defendant. The purposes of punitive damages are to punish a defendant for his conduct and to serve as an example or warning to Defendant and others not to engage in similar conduct in the future.

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

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

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

Defendant's No. 20 7th Cir. Pattern Jury Instruction (C.D. Ill. Aug. 26, 2009)	Given _____ Given as Modified _____ Refused _____ Withdrawn _____
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The Plaintiff alleges that the Defendants violated her Fourth Amendment Rights when, following her arrest, they subjected her to a strip/ body cavity search. Plaintiff challenges both the fact that she was subjected to a strip/ body cavity search, and the manner of the alleged strip/ body cavity search.

The Fourth Amendment prohibits unreasonable strip searches of arrestees. When is a strip search of an arrestee considered unreasonable? The law regards the strip search of an arrestee brought to a jail facility on a minor charge to be unreasonable unless the officer directing the search had “reasonable suspicion” that the arrestee was carrying or concealing weapons or other contraband.

I instruct you as a matter of law that the offense for which the Plaintiff was charged was a minor charge.

By “contraband,” the law means an item that is unlawful to possess or has been used to carry out a criminal offense. The officer’s reasonable suspicion may be based upon such factors as the nature of the offense for which the arrestee is charged, the arrestee’s appearance and conduct, a police officer’s experience, an alert by a narcotic detecting canine during a traffic stop, and the arrestee’s prior criminal record, if any.

The Plaintiff has the burden of proving, by the preponderance of the evidence that:

- (1) Defendants lacked reasonable suspicion for the strip search; and
- (2) Defendants conducted the strip search in an unreasonable manner.

It is for you, the jury to determine if the Defendants had reasonable suspicion for their strip search of the Plaintiff. With respect to the Plaintiff’s claim that the defendants were not entitled under the Fourth Amendment to subject her to a strip search, I instruct you as follows:

If you find that the Defendants did not have reasonable suspicion for the strip search, you must return a verdict for the Plaintiff.

If you find that the Defendants did have reasonable suspicion for the strip search, you must return a verdict for the Defendants on Plaintiff’s claim that the defendants did not have the right to strip search her.

This does not end your inquiry. Remember that the Plaintiff also challenges the manner in which the Defendants conducted alleged the strip/ body cavity search. Even if the Defendants had a reasonable suspicion for the strip search, the Fourth Amendment requires that the search be conducted in a reasonable manner. This means that the Defendants must respect an arrestee’s privacy interest. It is for you, the jury, to determine if the Defendants

carried out the strip search in a reasonable manner.

If you find that the Defendants did not conduct the strip search in a reasonable matter, even if they had reasonable suspicion to justify strip searching the Plaintiff, then you must return a verdict for the Plaintiff.

If you find that the Defendants did conduct the strip search in a reasonable manner, then you must return a verdict for the Defendants.

Defendant's No. 21 <i>Illinois v. Caballes</i> , 543 U.S. 405, (2005) <i>United States v. Freeman</i> , 2010 U.S. Dist. LEXIS 139568, (C.D. Ill. Aug. 26, 2009) <i>Mary Beth v. Chicago</i> , 723 F.2d 1263 (7 <sup>th</sup> Cir. 1983)	Given _____ Given as Modified _____ Refused _____ Withdrawn _____
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Let me explain what “reasonable suspicion” means. Reasonable suspicion is an objectively reasonable belief based on specific and articulable facts. Reasonable suspicion looks at the totality of the circumstances in light of common sense and practicality. In making this decision, you should consider the circumstances known to the Defendant(s) at the time of the stop, including the experience of Defendants as law enforcement officers.

Reasonable suspicion is a less demanding standard than probable cause and can arise from information that is less reliable than that required to show probable cause. Reasonable suspicion ~~only~~ requires only a minimal level of objective justification. Reasonable suspicion ~~need~~ not be based on evidence that would be sufficient to support a conviction, or even a showing that Defendant’s suspicion was probably right. The fact that no contraband was discovered in Plaintiff’s vehicle or on her person does not by itself mean that there was no reasonable suspicion that she possessed any contraband.

Reasonable suspicion does not require proof of wrongdoing by a preponderance of the evidence, but requires something more than a mere guess or hunch. Reasonable suspicion means that to justify the particular intrusion upon the Plaintiff, the Defendant(s) must be able to articulate specific facts which, taken together with rational inferences from the facts, reasonably warrant the Defendant(s) conclusion that the Plaintiff may possess contraband. Reasonable suspicion does not require that the Defendant(s) be absolutely certain that the Plaintiff possesses contraband.

Plaintiff has the burden of proving that the Defendant(s) lacked reasonable suspicion for the alleged strip / body cavity search. In deciding this issue, you should consider all the facts available to the Defendant(s) at the time of the stop. You should consider whether those facts, viewed from the standpoint of a reasonable law enforcement officer, amount to reasonable suspicion. Keep in mind that a law enforcement officer may reasonably draw conclusions, based on training and experience, that might not have occurred to an untrained person.

Defendant’s No. 22 <i>Illinois v. Wardlow</i> , 528 U.S. 119, (2000) <i>Illinois v. Caballes</i> , 543 U.S. 405 (2005) <i>Terry v. Ohio</i> , 392 U.S. 1 (1988) <i>U.S. v. Tinnie</i> , 629 F.3d 749 (7 <sup>th</sup> Cir. 2011) <i>U.S. v. Kenerson</i> , 585 F.3d 389 (7 <sup>th</sup> Cir. 2009) <i>U.S. v. Freeman</i> , 2010 U.S. Dist. LEXIS 139568 (C.D. Ill. Oct. 6, 2010)	Given _____ Given as Modified _____ Refused _____ Withdrawn _____
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The questions and answers you have just heard were permitted only to help you decide what this witness really knew about the reputation of *[Name]* for truthfulness. You may not use the questions and answers you have just heard for any other purpose.

Defendant's No. 23 7th Cir. Pattern Jury Instruction 2.10	Given _____ Given as Modified _____ Refused _____ Withdrawn _____
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