

*State v. Kent*, 535 S.W.2d 545, 548 (Mo. Ct. App. 1976)  
*Carroll v. U.S.*, 267 U.S. 132, 45 S. Ct. 280, 39 A.L.R. 790 (1925)  
 Submitted by Defendants  
 Not MAI

**Author's Note:** This instruction is submitted as a "Not in MAI." The use of "Not in MAI" instructions should be avoided whenever possible because the use of the MAI instructions is mandatory. If a "Not in MAI" must be given because there is no applicable MAI and there is no MAI which can reasonably be modified to fit the particular issue, the "Not in MAI" must be "simple, brief, impartial, free from argument, and shall not submit to the jury or require findings of detailed evidentiary facts." Rule 70.02, Missouri Rules of Civil Procedure. If an MAI is available, but needs to be modified to submit the issues in a case, the same rule of construction should be followed and the fact the MAI has been modified must be noted on the instruction submitted to the court. See Rule 70.02.

When the use of a "Not in MAI" is unavoidable, references to cases and/or statutes is recommended. Additionally, the instruction must be noted as a "Not in MAI." See Rule 70.02.

## INSTRUCTION NO. 7

Instructions 7 through 11 and general instructions 1 through 6 apply to the claim of Plaintiff Benson Ebinne for false arrest against Defendant Luis Perez. Use Verdict A to return your verdict on this claim.

MAI 2.05  
 Submitted by Plaintiff

**Author's Note:** MAI 2.05 is the packaging instruction to be used when there are multiple claims being submitted in the same case. See MAI 2.05 and the general comments regarding packaging in MAI 2.00, Missouri Approved Jury Instructions, Sixth Edition, for further information on use of this instruction.

## INSTRUCTION NO. 8

Your verdict must be for Plaintiff Benson Ebinne on his claim for false arrest if you believe:

First, Luis Perez intentionally restrained plaintiff against his will.

Unless you believe plaintiff is not entitled to recover by reason of Instruction Number 9.

M.A.I. 23.04  
Submitted by Plaintiff

**Author's Note:** MAI 23.04 is the MAI for use in cases submitting false imprisonment. See MAI 23.04, "Notes on Use," Missouri Approved Jury Instructions, Sixth Edition, for further information.

**Author's Note:** If the defendant chooses to submit a converse instruction, it would generally appear immediately after the plaintiff's verdict director. See MAI 33.01, the "General Comment" on converse instructions, Missouri Approved Jury Instructions, Sixth Edition. No converse instruction was given in this case. Caution must be taken when preparing the converse to use language essentially identical to that in plaintiff's verdict director. See MAI 33.01 for the "General Comment" on converse instructions, Missouri Approved Jury Instructions, Sixth Edition. Also, review the "Notes on Use" and "Committee Comment" for the particular MAI converse used.

#### INSTRUCTION NO. 9

Your verdict must be for defendant Luis Perez on plaintiff's claim of false arrest if you believe:

First, defendant Luis Perez was a St. Louis County Police Officer; and

Second, defendant Luis Perez had probable cause to believe that plaintiff had violated any law of the State of Missouri, including a misdemeanor, or had violated any St. Louis County Ordinance.

MAI 32.13 (modified) sec 544.216 RSMO  
Submitted by Defendant

**Author's Note:** MAI 32.13 is MAI for submission of the affirmative defense to a claim for false imprisonment related to shoplifting. This particular MAI has been modified by a statute which is properly referenced at the bottom of the instruction. Additionally, the final paragraph of MAI 32.13 regarding the length and manner of the restraint has been deleted.

If an MAI must be modified to fit the particular issues in a case, the modification must be "simple, brief, impartial, free from argument, and shall not submit to the jury or require findings of detailed evidentiary facts." Rule 70.02, Missouri Rules of Civil Procedure. The fact the MAI has been modified must be noted on the instruction submitted to the court. See Rule 70.02.

See MAI 32.13, "Notes on Use" and "Committee Comment," Missouri Approved Jury Instructions, Sixth Edition, for further information.

**Caution:** In November 2009, MAI 32.01, the "General Comment" for Affirmative Defenses was revised and the new version became effective July 1, 2010.

## INSTRUCTION NO. 10

If you find in favor of Plaintiff Benson Ebinne on his claim of false arrest, then you must award plaintiff such sum as you believe will fairly and justly compensate plaintiff for any damages you believe he sustained and is reasonably certain to sustain in the future as a direct result of the occurrence mentioned in the evidence.

MAI 4.01

Submitted by Plaintiff

**Author's Note:** Care should be taken to select the appropriate "Damages" instruction based on the type of case and elements at issue. See MAI 4.01, et seq., through MAI 9.02, MAI 10.01, et seq., MAI 12.06, MAI 21.03, MAI 21.04, MAI 21.09, MAI 21.11, MAI 21.13, MAI 21.15, MAI 37.03, and MAI 37.08, Missouri Approved Jury Instructions, Sixth Edition, for further information and explanation.

When submitting multiple claims, whether in separate packages or a single package, care must be taken in deciding the number of and modifications to the damage instruction(s) given. See MAI 4.01 "Notes on Use," Missouri Approved Jury Instructions, Sixth Edition, for the need to modify the term "occurrence" in this instruction. See also *Essex v. Getty Oil Co.*, 661 S.W.2d 544, 558 (Mo. Ct. App. W.D. 1983), in which the court found that an explicit definition of the term "occurrence" was not required because the jury was given separate sets of instruction for each claim, including the verdict director, made clear what "occurrence" was being referenced.

See also *Ross v. Holton*, 640 S.W.2d 166, 173 (Mo. Ct. App. E.D. 1982), in which the court suggested that one damage instruction (MAI 4.01) be given. *Ross* involved multiple claims (one for breach of contract and one for tortious interference with contract) involving coextensive damages from a singular act (breach of contract). The court noted that if plaintiff had proven damages other than those arising from the singular act (breach of contract), additional instructions would have been necessary.

## INSTRUCTION NO. 11

If you find the issues in favor of plaintiff Benson Ebinne on his claim of false arrest, and if you believe the conduct of defendant Luis Perez as submitted in Instruction Number 8 was outrageous because of defendant's evil motive or reckless indifference to the rights of others than (sic) in addition to any damages to which you find plaintiff entitled under Instruction Number 10, you may award plaintiff an additional amount as punitive damages in such sum as you believe will serve to punish defendant Luis Perez and to deter defendant Luis Perez and others from like conduct.

M.A.I. 10.01

Submitted by Plaintiff

**Author's Note:** Care should be taken to select the appropriate "Damages" instruction based on the type of case and elements at issue. For claims involving "Exemplary Damages," see MAI 10.00 et seq., Missouri Approved Jury Instructions, Sixth Edition, for further information and explanation. See MAI 4.01, et seq. through MAI 9.02, MAI 10.01, et seq., MAI 21.03, MAI 21.04, MAI 21.09, MAI 21.11, MAI 21.13, MAI 21.15, MAI 37.03, and MAI 37.08 Missouri Approved Jury Instructions, Sixth Edition, for additional "Damages" instructions and further information and explanation.

See also Illustration MAI 35.19, Missouri Approved Jury Instructions, Sixth Edition, for information concerning instructing on punitive damages when there is a bifurcated trial on such damages.

**Caution:** MAI 10.01 was revised in 2007 and the new version became effective in July 2008.

**Author's Note:** A defendant is entitled to converse the punitive damages instruction. See MAI 33.16, Missouri Approved Jury Instructions, Sixth Edition.

If the defendant chooses to submit such a converse, it would generally appear immediately after the punitive damages instruction.

See MAI 33.01, the "General Comment" on converse instructions, and MAI 33.16 in Missouri Approved Jury Instructions, Sixth Edition, for further information.

Defendant gave no converse of the punitive damages instruction in this case.

## VERDICT A

Note: Complete this form by writing in the name required by