

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

TIMOTHY CLAIR SHANNON,

Plaintiff,

vs.

MICHAEL KOEHLER, in his
individual and official capacities,

Defendant.

No. C 08-4059-MWB

JURY INSTRUCTIONS

TABLE OF CONTENTS

INSTRUCTIONS.	1
NO. 1 - INTRODUCTION.. . . .	1
NO. 2 - BURDEN OF PROOF.	3
NO. 3 - DEFINITION OF EVIDENCE.. . . .	4
NO. 4 - TESTIMONY OF WITNESSES.. . . .	6
NO. 5 - CONVICTIONS AND ACQUITTALS.. . . .	8
NO. 6 - EXCESSIVE FORCE.	10
NO. 7 - DAMAGES: IN GENERAL.. . . .	12
NO. 8 - DAMAGES: COMPENSATORY DAMAGES.	13
NO. 9 - DAMAGES: NOMINAL DAMAGES.. . . .	15
NO. 10 - DAMAGES: PUNITIVE DAMAGES.. . . .	16
NO. 11 - OUTLINE OF TRIAL.	18
NO. 12 - OBJECTIONS.	19
NO. 13 - BENCH CONFERENCES.	20
NO. 14 - NOTE-TAKING.	21
NO. 15 - CONDUCT OF JURORS DURING TRIAL.	22
NO. 16 - DELIBERATIONS.	25

VERDICT FORM

INSTRUCTION NO. 1 - INTRODUCTION

Congratulations on your selection as a juror!

These Instructions are to help you better understand the trial and your role in it.

As I explained during jury selection, plaintiff Timothy Shannon asserts a claim of “excessive force,” in violation of the Fourth Amendment to the United States Constitution, against defendant Michael Koehler, a member of the Sioux City Police Department. Koehler denies Shannon’s “excessive force” claim. The Fourth Amendment to the United States Constitution, ratified in 1791, protects all of us from the use of excessive force by law enforcement officers. This is true, even when an officer is making a lawful arrest.

You have been chosen and sworn as jurors to try the issues of fact related to the plaintiff’s claim. In making your decision, you are the sole judges of the facts. You must not decide this case based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these Instructions. Do not take anything that I have said or done or that I may say or do as indicating what I think of the evidence or what I think your verdict should be.

You should consider and decide this case as an action between persons of equal standing in the community, of equal worth, and holding the same or similar

stations in life. All persons, including plaintiff Shannon and defendant Koehler, stand equal before the law, and each is entitled to the same fair consideration.

Please remember that this case is important to the parties and to the fair administration of justice. Therefore, please be patient, consider all of the evidence, and do not be in a hurry to reach a verdict just to be finished with the case.

You will indicate your verdict in a Verdict Form, a copy of which is attached to these Instructions. A Verdict Form is simply a written notice of your decision. When you have reached a unanimous verdict, your foreperson will complete one copy of the Verdict Form by marking the appropriate blank or blanks for each question. You will all sign that copy to indicate that you agree with the verdict and that it is unanimous. Your foreperson will then bring the signed Verdict Form to the courtroom when it is time to announce your verdict.

I will explain how you are to decide if the plaintiff has proved his “excessive force” claim. First, however, I must explain some preliminary matters, including the burden of proof, what is evidence, and how you are to treat the testimony of witnesses.

INSTRUCTION NO. 2 - BURDEN OF PROOF

Your verdict depends on what facts have been proved. Facts must be proved “by the greater weight of the evidence.”

“Proof by the greater weight of the evidence” is proof that a fact is more likely true than not true.

- It does not depend on which side presented the greater number of witnesses or exhibits
- It requires you to consider all of the evidence and decide which evidence is more convincing or believable
 - For example, you may choose to believe the testimony of one witness, if you find that witness to be convincing, even if a number of other witnesses contradict that witness’s testimony
 - You are free to disbelieve any testimony or other evidence that you do not find convincing or believable
- If, on any issue in the case, you find that the evidence is equally balanced, then you cannot find that the issue has been proved

You may hear that criminal charges require “proof beyond a reasonable doubt.” That is a stricter standard, so that something that was not proved “beyond a reasonable doubt” in a criminal case could still be proved “by the greater weight of the evidence” in a civil case, such as this one. Remember that the burden applicable in this case is proof “by the greater weight of the evidence,” not proof “beyond a reasonable doubt.”

INSTRUCTION NO. 3 - DEFINITION OF EVIDENCE

Evidence is

- Testimony. Testimony may be either “live” or “by deposition.” A deposition is testimony taken under oath before the trial and preserved in writing or on video. Consider that testimony as if it had been given in court.
- Answers to interrogatories. An interrogatory is a written question asked before trial by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.
- Exhibits admitted into evidence. Just because an exhibit may be shown to you does not mean that it is more important than any other evidence.
- Stipulations, which are agreements between the parties. If the parties stipulate that certain facts are true, then you must treat those facts as having been proved.

Evidence is not

- Testimony that I tell you to disregard
- Exhibits that are not admitted into evidence
- Statements, arguments, questions, and comments by the lawyers

- Objections and rulings on objections
- Anything that you see or hear about this case outside the courtroom

You may have heard of “direct” or “circumstantial” evidence.

- “Direct” evidence is direct proof of a fact. An example is testimony by a witness about what that witness personally saw or heard or did.
- “Circumstantial” evidence is proof of one or more facts from which you could find another fact. An example is testimony that a witness personally saw a broken window and a brick on the floor from which you could find that the brick broke the window.
- You should consider both kinds of evidence, because the law makes no distinction between their weight. The weight to be given any evidence, whether it is “direct” or “circumstantial,” is for you to decide.

Some evidence may be admitted only for a limited purpose.

- I will tell you if that happens
- I will instruct you on the purposes for which the evidence can and cannot be used

INSTRUCTION NO. 4 - TESTIMONY OF WITNESSES

You may believe all of what any witness says, only part of it, or none of it.

In evaluating a witness's testimony, consider the following:

- the witness's
 - intelligence
 - memory
 - opportunity to have seen and heard what happened
 - motives for testifying
 - interest in the outcome of the case
 - manner while testifying
 - drug or alcohol use or addiction, if any
- the reasonableness of the witness's testimony
- any differences between what the witness says now and said earlier
- any inconsistencies between the witness's testimony and any other evidence that you believe
- whether any inconsistencies are the result of seeing or hearing things differently, actually forgetting things, or innocent mistakes or are, instead, the result of lies or phony memory lapses, and
- any other factors that you find bear on believability or credibility

You should not give any more or less weight to a witness's testimony just because

- The witness is a police officer or government employee
- The witness is an expert

You may give any witness's opinion whatever weight you think it deserves, but you should consider

- The reasons and perceptions on which the opinion is based
- Any reason that the witness may be biased, and
- All of the other evidence in the case

It is your exclusive right to give any witness's testimony whatever weight you think it deserves.

INSTRUCTION NO. 5 - CONVICTIONS AND ACQUITTALS

Shannon was charged with three criminal offenses arising from the events on September 13, 2006:

- He was found guilty of “interference with official acts”
 - This conviction has no bearing on this trial, other than to show that Shannon knowingly resisted Koehler when Koehler performed the act of handcuffing Shannon on September 13, 2006
 - You may consider Shannon’s knowing resistance, but knowing resistance alone is not enough to defeat a claim that Koehler used “excessive force”
- He was found not guilty of “public intoxication” and “assault of a peace officer”
 - The “not guilty” verdicts on these two charges show only that the prosecution was not able to prove these charges beyond a reasonable doubt
 - As I explained in Instruction No. 2, the burden of proof in a criminal case, “beyond a reasonable doubt,” is higher than the burden of proof in this civil case, “by the greater weight of the evidence”

You may also hear evidence that, on February 24, 2011, Shannon was convicted of “operating while intoxicated (OWI),” arising from an unrelated incident

- You may consider this evidence in evaluating Shannon’s believability or credibility. It is for you to decide what effect, if any, such a conviction has on his believability or credibility.

Keep in mind that you must decide this case solely on the evidence presented to you in this trial.

INSTRUCTION NO. 6 - EXCESSIVE FORCE

Shannon claims that Koehler used excessive force against him on September 13, 2006, in violation of the Fourth Amendment to the United States Constitution. Koehler denies this claim. Whether or not excessive force was used has nothing to do with whether or not Koehler's arrest of Shannon or taking him into custody was lawful. The lawfulness of the arrest is not before you. The only issue before you is whether the force Koehler used was excessive.

To win on his "excessive force" claim, Shannon must prove the following elements by the greater weight of the evidence:

One, on or about September 13, 2006, Koehler used physical force against Shannon.

The parties agree that Koehler used "physical force" against Shannon.

Two, the use of such force was excessive.

The force used was "excessive," if the force was more than was reasonably necessary to arrest Shannon or to take him into custody in the circumstances confronting Koehler. You must decide whether the force used was "excessive" without regard to Koehler's own state of mind, intention, or motivation, or facts unknown to him at the time he used force. In deciding whether the force used was "excessive," you must consider the following factors, if you find that they were present:

- the need for the application of force
- the relationship between the need and the amount of force used

- the extent of the injury inflicted
- whether a reasonable officer on the scene, without the benefit of 20/20 hindsight, would have used such force under similar circumstances
- whether the decision about how much force to use was made in tense, uncertain, or rapidly changing circumstances
- the severity of the crime for which Koehler arrested Shannon
- whether Shannon posed an immediate threat to the safety of Koehler or others
- whether Shannon was actively resisting arrest or attempting to flee

Three, as a direct result of Koehler’s use of excessive force, Shannon was damaged.

If Shannon has proved all of these elements by the greater weight of the evidence, then he is entitled to damages in some amount on his “excessive force” claim.

INSTRUCTION NO. 7 - DAMAGES: IN GENERAL

It is my duty to instruct you about the measure of damages. By instructing you on damages, I do not mean to suggest what your verdict should be on Shannon's claim.

If you find for Shannon on his "excessive force" claim, you must determine his damages.

- "Damages" are the amount of money that will reasonably and fairly compensate Shannon for any injury that you find was caused by Koehler
- It is for you to determine what damages, if any, have been proved
- Any award must be based upon evidence and not upon speculation, guesswork, conjecture, sympathy, or prejudice

**INSTRUCTION NO. 8 - DAMAGES:
COMPENSATORY DAMAGES**

Shannon seeks the following distinct types of damages:

- “Past medical expenses,” which are the reasonable value of
 - hospital charges
 - doctor charges
 - prescriptions
 - other medical servicesfrom the date of injury to the present
- “Past loss of function of the body,” from the date of injury to the present
- “Past physical pain and suffering,” which may include, but is not limited to,
 - unpleasant feelings
 - bodily distress and uneasiness
 - bodily suffering, sensations, or discomfortfrom the date of injury to the present
- “Past mental pain and suffering,” which may include, but is not limited to,
 - emotional distress
 - loss of enjoyment of lifefrom the date of injury to the present

You must enter separate amounts for each type of damages, if any, caused by Koehler's wrongful conduct. Do not include the same items in more than one category.

**INSTRUCTION NO. 9 - DAMAGES:
NOMINAL DAMAGES**

“Nominal damages” are awarded to vindicate a plaintiff’s rights, when the violation of those rights has not caused injury that can be valued in monetary terms. If you find for Shannon on his “excessive force” claim, but you find that he has failed to prove “compensatory damages” as defined in Instruction No. 8, then you must award “nominal damages.” In other words, do not award “nominal damages” if you award any “compensatory damages.” “Nominal damages” cannot exceed one dollar.

INSTRUCTION NO. 10 - DAMAGES: PUNITIVE DAMAGES

If you find for Shannon on his “excessive force” claim, you may, but are not required to, award punitive damages. Punitive damages are awarded to punish the defendant for engaging in the misconduct at issue and to deter the defendant and others from engaging in such misconduct in the future.

To get punitive damages, Shannon must prove the following by the greater weight of the evidence:

One, punitive damages should be awarded.

You may award punitive damages even if you award Shannon only nominal, and not compensatory, damages. You may award punitive damages on the “excessive force” claim only if Koehler acted

- with malice, which is an evil motive or intent,
- or**
- with reckless indifference to Shannon’s federally protected right to be free from the use of excessive force

In deciding whether to award punitive damages, you should also consider whether Koehler’s conduct was reprehensible. To decide whether conduct was “reprehensible,” you may consider the following:

- whether the harm suffered by Shannon was physical or economic or both
- whether there was violence, intentional malice, or reckless disregard for human health or safety

Two, the amount of any punitive damages.

You must use reason in setting the amount of any punitive damages. You should consider the following:

- how much harm Koehler's conduct caused Shannon
- what amount of punitive damages would bear a reasonable relationship to the harm caused to Shannon
- what amount of punitive damages, in addition to other damages already awarded, is needed, considering Koehler's financial condition, to deter Koehler and others from similar wrongful conduct in the future

On the other hand, you must not consider the following:

- bias, prejudice, or sympathy toward any party
- punishment of Koehler for harm to anyone other than Shannon

INSTRUCTION NO. 11 - OUTLINE OF TRIAL

I will now explain how the trial will proceed.

After I have read all but the last Instruction,

- The lawyers may make opening statements. An opening statement is not evidence, but simply a summary of what the lawyer expects the evidence to be.
- The plaintiff will present evidence and call witnesses and the lawyers for the defendant may cross-examine them.
- The defendant may present evidence and call witnesses, and the lawyers for the plaintiff may cross-examine those witnesses.
- The parties will make their closing arguments to summarize and interpret the evidence for you. Like opening statements, closing arguments are not evidence.
- I will give you the last Instruction, on “deliberations.”
- You will retire to deliberate on your verdict.

INSTRUCTION NO. 12 - OBJECTIONS

The lawyers may make objections and motions during the trial that I must rule upon.

- If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself
- Do not hold it against a lawyer or a party that a lawyer has made an objection, because lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible

INSTRUCTION NO. 13 - BENCH CONFERENCES

During the trial it may be necessary for me to talk with the lawyers out of your hearing.

- I may hold a bench conference while you are in the courtroom or call a recess
- These conferences are to decide how certain evidence is to be treated, to avoid confusion and error, and to save your valuable time, so please be patient
- We will do our best to keep such conferences short and infrequent

INSTRUCTION NO. 14 - NOTE-TAKING

You are allowed to take notes during the trial if you want to.

- Be sure that your note-taking does not interfere with listening to and considering all the evidence
- Your notes are not necessarily more reliable than your memory or another juror's notes or memory
- Do not discuss your notes with anyone before you begin your deliberations
- Leave your notes on your chair during recesses and at the end of the day
- At the end of trial, you may take your notes with you or leave them to be destroyed
- No one else will ever be allowed to read your notes, unless you let them

If you choose not to take notes, remember that it is your own individual responsibility to listen carefully to the evidence.

An official court reporter is making a record of the trial, but her transcripts will not be available for your use during your deliberations.

INSTRUCTION NO. 15 - CONDUCT OF JURORS DURING TRIAL

You must decide this case *solely* on the evidence and your own observations, experiences, reason, common sense, and the law in these Instructions. You must also keep to yourself any information that you learn in court until it is time to discuss this case with your fellow jurors during deliberations.

To ensure fairness, you must obey the following rules:

- Do not talk among yourselves about this case, or about anyone involved with it, until you go to the jury room to decide on your verdict.
- Do not talk with anyone else about this case, or about anyone involved with it, until the trial is over.
- When you are outside the courtroom, do not let anyone tell you anything about this case, anyone involved with it, any news story, rumor, or gossip about it, or ask you about your participation in it until the trial is over. If someone should try to talk to you about this case during the trial, please report it to me.
- During the trial, you should not talk to any of the parties, lawyers, or witnesses—even to pass the time of day—so that there is no reason to be suspicious about your fairness. The lawyers, parties, and witnesses are not supposed to talk to you, either.

- You may need to tell your family, friends, teachers, co-workers, or employer about your participation in this trial, so that you can tell them when you must be in court and warn them not to ask you or talk to you about the case. However, do not provide any information to anyone by any means about this case until after I have accepted your verdict. That means do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, Blackberry, PDA, computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog, or website such as Facebook, MySpace, YouTube, or Twitter, to communicate to anyone any information about this case until I accept your verdict.
- Do not do any research—on the Internet, in libraries, in the newspapers, or in any other way—or make any investigation about this case, the law, or the people involved on your own.
- Do not visit or view any place discussed in this case and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony.
- Do not read any news stories or articles, in print, on the Internet, or in any “blog,” about this case, or about anyone involved with it, or listen to any radio or television reports about it or about anyone involved with it, or let anyone tell you anything about any such news reports. I assure you that when you have heard all the evidence, you will know

more about this case than anyone will learn through the news media—and it will be more accurate.

- Do not make up your mind during the trial about what the verdict should be. Keep an open mind until you have had a chance to discuss the evidence with other jurors during deliberations.
- Do not decide the case based on “implicit biases.” As we discussed in jury selection, everyone, including me, has feelings, assumptions, perceptions, fears, and stereotypes, that is, “implicit biases,” that we may not be aware of. These hidden thoughts can impact what we see and hear, how we remember what we see and hear, and how we make important decisions. Because you are making very important decisions in this case, I strongly encourage you to evaluate the evidence carefully and to resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, your individual evaluation of that evidence, your reason and common sense, and these Instructions. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.
- If, at any time during the trial, you have a problem that you would like to bring to my attention, or if you feel ill or need to go to the restroom, please send a note to the Court Security Officer (CSO), who will give it to me. I want you to be comfortable, so please do not hesitate to tell us about any problem.

I will read the remaining Instruction at the end of the evidence.

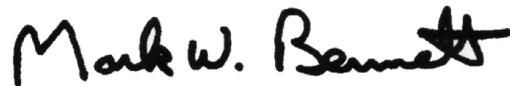
INSTRUCTION NO. 16 - DELIBERATIONS

In conducting your deliberations and returning your verdict, there are certain rules that you must follow.

- When you go to the jury room, select one of your members as your foreperson to preside over your discussions and to speak for you here in court.
- Discuss this case with one another in the jury room to try to reach agreement on the verdict, if you can do so consistent with individual judgment. However, each of you must make your own conscientious decision, after considering all the evidence, discussing it fully with your fellow jurors, and listening to the views of your fellow jurors.
- Do not be afraid to change your opinions if the discussion with other jurors persuades you that you should, but do not come to a decision simply because other jurors think it is right, or simply to reach a verdict.
- Remember that you are not advocates, but judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case.
- If you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. *Remember that you should not tell anyone—including me—how your votes stand numerically.*

- Base your verdict solely on the evidence and on the law as I have given it to you in my Instructions. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.
- Your verdict on each question submitted must be unanimous.
- Complete and sign one copy of the Verdict Form. The foreperson must bring the signed Verdict Form to the courtroom when it is time to announce your verdict.
- When you have reached a verdict, the foreperson will advise the Court Security Officer that you are ready to return to the courtroom.

DATED this 7th day of November, 2011.



MARK W. BENNETT
U. S. DISTRICT COURT JUDGE
NORTHERN DISTRICT OF IOWA

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

TIMOTHY CLAIR SHANNON,

Plaintiff,

vs.

MICHAEL KOEHLER, in his
individual and official capacities,

Defendant.

No. C 08-4059-MWB

VERDICT FORM

On the claim of plaintiff Timothy Shannon, we, the Jury, find as follows:

VERDICT	
<p>On plaintiff Shannon’s “excessive force” claim, as explained in Instruction No. 6, in whose favor do you find? <i>(If you find in favor of plaintiff Shannon on this claim, then you must award damages in some amount in the “Damages” section of the verdict form. However, if you find in favor of defendant Koehler, then do not award any damages.)</i></p>	
<p>___ Timothy Shannon</p>	<p>___ Michael Koehler</p>
DAMAGES	
<p>Step 1: Compensatory Damages</p>	<p><i>If you found in favor of plaintiff Shannon on his “excessive force” claim, what amount, if any, do you award for the following types of “compensatory damages,” as such damages are explained in Instruction No. 8? (If you find that plaintiff Shannon has failed to prove compensatory damages, then you must award “nominal damages” in Step 2.)</i></p>
	<p>\$ _____ for past medical expenses</p>
	<p>\$ _____ for past loss of function of the body</p>
	<p>\$ _____ for past physical pain and suffering</p>
	<p>\$ _____ for past mental pain and suffering</p>

Step 2: Nominal Damages	<i>If you found for plaintiff Shannon on his “excessive force” claim, but you find that he has failed to prove “compensatory damages” as defined in Instruction No. 8, then you must award “nominal damages,” as explained in Instruction No. 9. (Do not award “nominal damages” if you awarded compensatory damages in Step 1. “Nominal damages” cannot exceed \$1).</i>	
	\$ _____ for nominal damages.	
Step 3: Punitive Damages	<i>If you found in favor of plaintiff Shannon on his “excessive force” claim, what amount, if any, do you award for “punitive damages,” as such damages are explained in Instruction No. 10?</i>	
	\$ _____ for punitive damages	
SPECIAL FINDINGS OF FACT		
Step 1:	Do you find that Shannon poked Koehler before Koehler took down Shannon?	
	___ No	___ Yes
Step 2:	<i>If you answered “yes” to the question in Step 1, how many times do you find Shannon poked Koehler before Koehler took down Shannon?</i>	
	___ times	

Date: _____ **Time:** _____

Foreperson	Juror
Juror	Juror
Juror	Juror
Juror	Juror

