

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

DAVID EDWARD NIELSEN, JR.,

Plaintiff,

vs.

ROGELIO VALDEZ, individually and as
a Police Officer for the City of Denison,

Defendant.

No. 19-CV-4017-CJW-MAR

JURY INSTRUCTIONS

INSTRUCTION NO. 1

Members of the Jury: I am now going to give you some instructions about this case and about your duties as jurors. At the end of the trial I will give you more instructions. I may also give you instructions during the trial. All instructions - those I give you now and those I give you later are equally important, and you must follow them all. The instructions I am about to give you now are in writing and will be available to you in the jury room.

You must leave your cell phone, PDA, smart phone, iPhone, tablet computer, and any other wireless communication devices in the jury room during the trial and may only use them during breaks. However, you are not allowed to have those devices in the jury room during your deliberations. You may give them to the court security officer for safekeeping just before you start to deliberate. They will be returned to you when your deliberations are complete.

INSTRUCTION NO. 1 (continued)

This is a civil case brought by plaintiff David Nielsen, against defendant Rogelio Valdez. Valdez is an officer with the Denison, Iowa, police department. Nielsen claims that, during an incident in the parking lot of his apartment complex on September 18, 2018, Valdez violated his constitutional right to be free from being subjected to “excessive force” while being detained by Valdez; that Valdez was negligent in the manner in which he detained Nielsen; and that Valdez committed a battery upon Nielsen. Nielsen seeks money damages for the alleged violations. Valdez denies these claims, and he denies that Nielsen is entitled to an award of money damages. It will be your duty to decide from the evidence whether plaintiff is entitled to a verdict against defendant.

Your duty is to decide what the facts are from the evidence. You are allowed to consider the evidence in the light of your own observations and experiences. After you have decided what the facts are, you will have to apply those facts to the law that I give you in these and in my other instructions. That is how you will reach your verdict. Only you will decide what the facts are. However, you must follow my instructions, whether you agree with them or not. You have taken an oath to follow the law that I give you in my instructions.

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness says, or only part of it, or none of it.

In deciding what testimony to believe, consider the witnesses’ intelligence, their opportunity to have seen or heard the things they testify about, their memories, any reasons they might have to testify a certain way, how they act while testifying, whether they said something different at another time, whether their testimony is generally reasonable, and how consistent their testimony is with other evidence that you believe.

INSTRUCTION NO. 1 (continued)

Do not let sympathy, or your own likes or dislikes, influence you. The law requires you to come to a just verdict based only on the evidence, your common sense, and the law that I give you in my instructions, and nothing else.

Nothing I say or do during this trial is meant to suggest what I think of the evidence or what I think your verdict should be.

INSTRUCTION NO. 2

When I use the word “evidence,” I mean the testimony of witnesses; documents and other things I receive as exhibits; facts that I tell you the parties have agreed are true; and any other facts that I tell you to accept as true.

Some things are not evidence. I will tell you now what is not evidence:

1. Lawyers’ statements, arguments, questions, and comments are not evidence.
2. Documents or other things that might be in court or talked about, but that I do not receive as exhibits, are not evidence.
3. Objections are not evidence. Lawyers have a right – and sometimes a duty – to object when they believe something should not be a part of the trial. Do not be influenced one way or the other by objections. If I sustain a lawyer’s objection to a question or an exhibit, that means the law does not allow you to consider that information. When that happens, you have to ignore the question or the exhibit, and you must not try to guess what the information might have been.
4. Testimony and exhibits that I strike from the record, or tell you to disregard, are not evidence, and you must not consider them.
5. Anything you see or hear about this case outside the courtroom is not evidence, and you must not consider it.

Also, I might tell you that you can consider a piece of evidence for one purpose only, and not for any other purpose. If that happens, I will tell you what purpose you can consider the evidence for and what you are not allowed to consider it for.

Some of you may have heard the terms “direct evidence” and “circumstantial evidence.” You should not be concerned with those terms, since the law makes no distinction between the weight to be given to either direct or circumstantial evidence.

INSTRUCTION NO. 3

During the trial, I will sometimes need to talk privately with the lawyers. I may talk with them here at the bench while you are in the courtroom, or I may call a recess and let you leave the courtroom while I talk with the lawyers. Either way, please understand that while you are waiting, we are working. We have these conferences to make sure that the trial is proceeding according to the law and to avoid confusion or mistakes. We will do what we can to limit the number of these conferences and to keep them as short as possible.

INSTRUCTION NO. 4

At the end of the trial, you will have to make your decision based on what you recall of the evidence. You will not have a written copy of the testimony to refer to. Because of this, you have to pay close attention to the testimony and other evidence as it is presented here in the courtroom.

If you wish, however, you may take notes to help you remember what witnesses say. If you do take notes, do not show them to anyone until you and your fellow jurors go to the jury room to decide the case after you have heard and seen all of the evidence. Do not let taking notes distract you from paying close attention to the evidence as it is presented.

Before the opening statements, we will give each juror an envelope with a pad and pen in it. The envelopes are numbered according to your seat in the jury box. When you leave for breaks or at night, please put your pad and pen in the envelope and leave the envelope on your chair. Your notes will be secured, and they will not be read by anyone. At the end of trial and your deliberations, your notes should be left in the jury room for destruction.

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.

INSTRUCTION NO. 5

Jurors, to make sure this trial is fair to all parties, you must follow these rules:

First, do not talk or communicate among yourselves about this case, or about anyone involved with it, until the end of the trial when you go to the jury room to consider your verdict.

Second, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended and you have been discharged as jurors.

Third, when you are outside the courtroom, do not let anyone tell you anything about the case, or about anyone involved with it until the trial has ended and your verdict has been accepted by me. If someone tries to talk to you about the case before a verdict is rendered, please report it to the court security officer.

Fourth, during the trial, do not talk with or speak to any of the parties, lawyers, or witnesses in this case – not even to pass the time of day. It is important not only that you do justice in this case, but also that you act accordingly. If a person from one side of the lawsuit sees you talking to a person from the other side – even if it is just about the weather – that might raise a suspicion about your fairness. So, when the lawyers, parties and witnesses do not speak to you in the halls, on the elevator or the like, you must understand that they are not being rude. They know they are not supposed to talk to you while the trial is going on, and they are just following the rules.

Fifth, you may need to tell your family, close friends, and other people that you are a part of this trial. You can tell them when you have to be in court, and you can warn them not to ask you about this case, tell you anything they know or think they know about this case, or talk about this case in front of you. But, you must not communicate with anyone or post information in any manner about the parties, witnesses, participants, claims, evidence, or anything else related to this case.

INSTRUCTION NO. 5 (continued)

You must not tell anyone anything about the jury's deliberations in this case until after I accept your verdict or until I give you specific permission to do so. If you talk about the case with someone besides the other jurors during deliberations, it looks as if you might already have decided the case or that you might be influenced in your verdict by their opinions. That would not be fair to the parties, and it might result in the verdict being thrown out and the case having to be tried over again. During the trial, while you are in the courthouse and after you leave for the day, do not give any information to anyone, by any means, about this case. For example, do not talk face-to-face or use any electronic device, such as a telephone, cell phone, smart phone, Blackberry, PDA, computer, or computer-like device. Likewise, do not use the Internet or any Internet service; do not text or send instant messages; do not go on or use any Internet or other medium, including an Internet chat room, blog, App, or other websites such as Facebook, LinkedIn, Instagram, YouTube, or Twitter. In other words, do not communicate with anyone about this case – except for the other jurors during deliberations – until I accept your verdict.

Sixth, do not do any research — on the Internet, in libraries, newspapers, or otherwise — and do not investigate this case on your own. Do not visit or view any place discussed in this case, and do not use the Internet or other means to search for or view any place discussed in the testimony. Also, do not look up any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, me, or the court.

INSTRUCTION NO. 5 (continued)

Seventh, do not read or otherwise receive any information, including any news stories or Internet articles or blogs that are about the case, or about anyone involved with it. Do not listen to any radio or television reports, or digital streaming, about the case or about anyone involved with it. In fact, until the trial is over I suggest that you reduce or limit reading or receiving any digital streaming or any newspapers or news journals, and avoid listening to any television or radio newscasts at all. I do not know whether there will be news reports about this case, but if there are, you might accidentally find yourself reading or listening to something about the case. If you want, you can have someone collect information or clip out any stories and set them aside to give to you after the trial is over. I can assure you, however, that by the time you have heard all the evidence in this case, you will know what you need to return a just verdict.

The parties have a right to have you decide their case based only on evidence admitted here in court. If you research, investigate, or experiment on your own, or get information from other sources, your verdict might be influenced by inaccurate, incomplete, or misleading information. Witnesses here in court take an oath to tell the truth, and the accuracy of their testimony is tested through cross-examination. All of the parties are entitled to a fair trial and an impartial jury, and you have to conduct yourselves in a way that assures the integrity of the trial process. If you decide a case based on information not admitted in court, you will deny the parties a fair trial. You will deny them justice. Remember, you have taken an oath to follow the rules, and you must do so. If you do not, the case might have to be retried, and you could be held in contempt of court and possibly punished.

Eighth, do not make up your mind during the trial about what your verdict should be. Keep an open mind until after you and your fellow jurors have discussed all the evidence.

INSTRUCTION NO. 6

The trial will proceed in the following manner:

First, the plaintiff's lawyer may make an opening statement. Next, the defendant's lawyers may make an opening statement. An opening statement is not evidence, but it is a summary of the evidence the lawyers expect you will see and hear during the trial.

After opening statements, the plaintiff will then present evidence. The defendant's lawyer will have a chance to cross-examine the plaintiff's witnesses. After the plaintiff has finished presenting his case, the defendant may present evidence, and the plaintiff's lawyer will have a chance to cross-examine his witnesses.

After you have seen and heard all of the evidence from all sides, the lawyers will make closing arguments that summarize and interpret the evidence. Just as with opening statements, closing arguments are not evidence. After the parties' closing arguments, I will instruct you further on the law. After closing arguments and my final instructions, you will go to the jury room to deliberate and decide on your verdict.

INSTRUCTION NO. 7

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

You may consider a witness's intelligence; the opportunity the witness had to see or hear the things testified about; a witness's memory, knowledge, education, and experience; any reasons a witness might have for testifying a certain way; how a witness acted while testifying; whether a witness said something different at another time; whether a witness's testimony sounded reasonable; and whether or to what extent a witness's testimony is consistent with other evidence you believe. Do not let sympathy, or your own likes or dislikes, influence you. The law requires you to come to a just verdict based only on the evidence, your common sense, and the law that I give you in my instructions, and nothing else.

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

INSTRUCTION NO. 8

You will have to decide whether certain facts have been proved by the greater weight of the evidence. A fact has been proved by the greater weight of the evidence, if you find that it is more likely true than not true. You decide that by considering all of the evidence and deciding what evidence is more believable.

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

INSTRUCTION NO. 9

You may hear testimony from witnesses who may be knowledgeable in a field because of their education, experience, or both. They are permitted to give their opinions on matters in that field and the reasons for their opinions.

You may accept or reject such testimony just like testimony from any other witness. After considering the witnesses' education and experience, the reasons given for the opinion, and all the other evidence in the case, you may give such testimony whatever weight, if any, you think it deserves.

INSTRUCTION NO. 10

During trial, testimony may be presented to you in the form of a deposition. A deposition is the recorded answers a witness made under oath to questions asked by lawyers before trial. The deposition testimony to be offered was recorded in writing and will be read or shown to you. You should consider the deposition testimony, and judge its credibility, as you would that of any witness who testifies here in person.

For depositions recorded in writing and read during trial you should not place any significance on the manner or tone of voice used to read the witness's answers to you.

INSTRUCTION NO. 11

The plaintiff and the defendant have stipulated—that is agreed—that certain facts are as counsel have stated. You should, therefore, treat those facts as having been proved. Plaintiff and defendant have stipulated that:

1. All times relevant hereto the Defendant acted under color of state law.
2. The subject matter incident occurred on September 18, 2018, in the parking lot of Oakwood Manor Apartments located at 311 N. 12th St., Denison, Iowa.

INSTRUCTION NO. 12

The conduct of a party is a cause of damage when the damage would not have happened except for the conduct.

INSTRUCTION NO. 13

Your verdict must be for plaintiff David Nielsen and against defendant Rogelio Valdez on plaintiff's claim of excessive force if plaintiff has proved all the following elements:

First, the defendant pulled the plaintiff from the car, and/or threw the plaintiff to the ground, and/or stepped on his head when arresting him.

Second, the defendant was acting under color of state law. Acts are done under color of law when a person acts or purports to act in the performance of official duties under any state, county or municipal law, ordinance or regulation.

Third, the force used was excessive because it was not reasonably necessary to take the plaintiff into custody; and

Fourth, as a direct result, the plaintiff was injured.

In determining whether the force was "excessive," you must consider: the need for the application of force; the relationship between the need and the amount of force that was used; the extent of the injury inflicted; and whether a reasonable officer on the scene, without the benefit of hindsight, would have used that much force under similar circumstances. You should keep in mind that the decision about how much force to use often must be made in circumstances that are tense, uncertain and rapidly changing. You must decide whether the officer's actions were reasonable in the light of the facts and circumstances confronting the officer without regard to the officer's own state of mind, intention or motivation.

If any of the above numbered elements has not been proved, then your verdict must be for defendant.

INSTRUCTION NO. 14

Your verdict must be for plaintiff David Nielsen and against defendant Rogelio Valdez on plaintiff's battery claim if plaintiff has proved all the following elements:

First, the defendant pulled the plaintiff from the car, and/or threw the plaintiff to the ground, and/or stepped on his head when arresting him; and

Second, the act was done with the intent to cause physical pain or injury or insulting or offensive bodily contact; and

Third, the defendant's act resulted in physical pain or injury or insulting or offensive bodily contact; and

Fourth, the defendant's act was a cause of plaintiff's injuries; and

Fifth, the amount of damage.

"Intent" means doing something on purpose as opposed to accidentally. Because intent requires a finding of what a person is thinking when doing an act, it is seldom capable of being proven by direct evidence. You may use your common experience when considering all of the facts surrounding the doing of an act to determine what a person's intent was when committing the act. You may find that if a person does an act on purpose, the person also intended the natural results of the act.

A peace officer may use any force that the officer reasonably believes to be necessary to effect an arrest. In determining whether the force was "excessive," that is, it was not objectively reasonable, you must consider: the need for the application of force; the relationship between the need and the amount of force that was used; the extent of the injury inflicted; and whether a reasonable officer on the scene, without the benefit of hindsight, would have used that much force under similar circumstances. You should keep in mind that the decision about how much force to use often must be made in circumstances that are tense, uncertain and rapidly changing. You must decide whether the officer's actions were reasonable in the light of the facts and circumstances

confronting the officer without regard to the officer's own state of mind, intention or motivation.

If any of the above numbered elements has not been proved, or if you have determined that the force used by defendant was objectively reasonable, then your verdict must be for defendant.

INSTRUCTION NO. 15

Your verdict must be for plaintiff David Nielsen and against defendant Rogelio Valdez on plaintiff's negligence claim if plaintiff has proved all of the following numbered propositions:

First, the defendant was negligent in one or more of the following ways:

- a. Pulling Nielsen from his car without reasonable need to do so, and/or
- b. Throwing Nielsen to the ground without reasonable need to do so,
and/or
- c. Stepping on Nielsen's head.

Second, the negligence was a cause of damage to the plaintiff.

Third, the amount of damage.

If the plaintiff has failed to prove any of these numbered propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount.

"Negligence" means failure to use ordinary care. Ordinary care is the care which a reasonably careful person would use under similar circumstances. "Negligence" is doing something a reasonably careful person would not do under similar circumstances, or failing to do something a reasonably careful person would do under similar circumstances.

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Plaintiff,

vs.

ROGELIO VALDEZ, individually and as
a Police Officer for the City of Denison,

Defendant.

No. 19-CV-4017-CJW-MAR

FINAL JURY INSTRUCTIONS

Members of the jury, the instructions I gave at the beginning of the trial and during the trial are still in effect. Now I am going to give you some additional instructions. You have to follow all of my instructions –the ones I gave you earlier, as well as those I give you now. Do not single out some instructions and ignore others, because they are all important. You will have copies of all of the instructions, those I gave you at the beginning of trial and those I am giving you now, in the jury room.

INSTRUCTION NO. 16

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 any claim.

INSTRUCTION NO. 17

If you find in favor of the plaintiff you must award him an amount of money that will fairly compensate him for any damages you find he sustained as a direct result of the conduct of defendant as submitted in Instructions 13, 14, and 15.

You should consider the following types of damages:

1. The physical pain and mental suffering the plaintiff has experienced and the nature and extent of the injury.
2. The past loss of function of the body. Loss of body function is the inability of a particular part of the body to function in a normal manner.

The amount you assess for past physical and mental pain and suffering and past loss of body function cannot be measured by any exact or mathematical standard. You must use your sound judgment based upon an impartial consideration of the evidence. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties.

If you find in favor of the plaintiff under Instruction 13, but you find that the plaintiff's damages have no monetary value, then you must return a verdict for the plaintiff in the nominal amount of One Dollar (\$1.00).

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage.

INSTRUCTION NO. 18

In addition to the damages mentioned in other instructions, the law permits the jury under certain circumstances to award punitive damages.

If you find in favor of the plaintiff under Instructions 13, 14, or both, and if it has been proved that the conduct of defendant Valdez as submitted in Instructions 13 and 14 was malicious or recklessly indifferent to the plaintiff's right to be free from excessive force, then you may, but are not required to, award the plaintiff an additional amount of money as punitive damages for the purposes of punishing the defendant for engaging in misconduct and engaging in similar misconduct in the future. You should assume that a plaintiff has been made whole for his injuries by the damages awarded under Instruction 17.

If you decide to award punitive damages, you should consider the following in deciding the amount of punitive damages to award:

1. How reprehensible the defendant's conduct was. In this regard, you may consider whether there was violence, deceit, intentional malice, reckless disregard for human health or safety, whether the defendant's conduct that harmed the plaintiff also posed a risk of harm to others, whether there was any repetition of the wrongful conduct and past conduct of the sort that harmed plaintiff.
2. How much harm the defendant's wrongful conduct caused the plaintiff.
3. What amount of punitive damages, in addition to the other damages already awarded, is needed, considering the defendant's financial condition, to punish the defendant for his wrongful conduct toward the plaintiff and to discourage the defendant and others from similar wrongful conduct in the future.

The amount of any punitive damages award should bear a reasonable relationship to the harm caused to the plaintiff.

INSTRUCTION NO. 19

In arriving at an item of damage, you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage, and agreeing in advance that the average of those estimates shall be your item of damage.

INSTRUCTION NO. 20

This case should be considered and decided by you 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 stand equal before the law, and are to be dealt with as equals in a Court of law.

INSTRUCTION NO. 21

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

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in Court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict must be unanimous.

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

Do not be afraid to change your opinions if the discussion 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 at all times that you are not partisans. You are judges - judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

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

Fourth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be - that is entirely for you to decide.

Fifth, I am giving you a Verdict Form. A Verdict Form is simply the written notice of the decision that you reach in this case. The answers to the questions in the Verdict Form must be the unanimous decisions of the jury. You will take this form to the jury room, and when you have completed your deliberations and each of you has agreed on the answers to the Verdict Form, your foreperson will fill out the forms, sign and date them. The foreperson must bring the signed Verdict Forms 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.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return such verdict as accords with the evidence and these instructions.

Proceed to consider damages only if you found in Nielsen's favor on at least one of the items identified above.

II. DAMAGES

4. We find plaintiff David Nielsen's damages, as submitted in Instruction No. 17, to be:

\$ _____ (state the amount of damages, or if none, write the word "none" in the appropriate blank, or if you find that plaintiff's damages have no monetary value, state the nominal amount of \$1.00)

If you found in favor of plaintiff in question 1 or 2, and awarded any amount of damages in question 4, then proceed to question 5. Otherwise, answer no further questions and proceed to sign the verdict form.

5. We assess punitive damages, as submitted in Instruction No. 18, against defendant Rogelio Valdez in the amount of \$ _____ as follows:

a. Past Pain and Suffering

\$ _____ (state the amount or, if none, write the word "none").

b. Past Loss of Body Function

\$ _____ (state the amount or, if none, write the word "none").

The amount of total damages must equal the amount awarded for past pain and suffering plus the amount awarded for past loss of body function.

Proceed to sign and date the verdict form.

Date

Foreperson