

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

TINA DEAN, Individually and as next of friend for her minor children DD, DC, and DZD; and TRACY MCGONIGLE, as next of friend for her minor child HH,

Plaintiffs,

vs.

JAY MURRAY and BRIAN JOBGEN, Individually and as police officers for the City of Dubuque Iowa,

Defendants.

No. 16-CV-1003-KEM

**INSTRUCTIONS TO THE JURY
(July 24, 2017)**

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INSTRUCTION NO. 1 - INTRODUCTION

Ladies and Gentlemen: 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 - whether they are in writing or given to you orally – are equally important and you must follow them all.

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 deputy clerk or court security officer for safekeeping just before you start to deliberate. They will be returned to you when your deliberations are complete.

This is a civil case brought by the Plaintiffs, Tina Dean, individually and on behalf of her minor children Dairein Dean, Donmikeala Collins, and Dezaray Dean, and Tracy McGonigle on behalf of her minor child Haylee Heidt, against Defendants Jay Murray and Brian Jobgen. Tina Dean and Tracy McGonigle each bring claims as the parents of their minor child or children. Tina Dean also brings her own individual claim. Defendants are both officers of the Dubuque Police Department, so I will call them “Defendant Officers.” Plaintiffs claim that during an incident on or about August 17, 2015, the Defendant Officers violated the constitutional rights of Tina Dean, Dairein Dean, Donmikeala Collins, Dezaray Dean, and Haylee Heidt to be free from the use of “excessive force” by law enforcement officers. Tina Dean also claims that during the same incident, Defendant Officer Murray violated the constitutional rights of Dairein Dean and Donmikeala Collins to be free from unlawful arrest, that is arrest without probable cause. Plaintiffs seek money damages for the alleged violations of their constitutional rights. The Defendant Officers deny their claims. It will be your duty to decide from the evidence whether any Plaintiff is entitled to recover from any Defendant Officer.

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.

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 – whether private individuals or public officials, like law enforcement officers – stand equal before the law and are entitled to the same fair consideration.

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 your verdict should be.

INSTRUCTION NO. 2 - EVIDENCE

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 unless I specifically tell you otherwise.

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. You need to pay close attention when I give an instruction about evidence that you can consider for only certain purposes, because you might not have that instruction in writing later in the jury room.

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 direct and circumstantial evidence.

INSTRUCTION NO. 3 - CREDIBILITY OF WITNESSES

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.

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. 4 – NOTE-TAKING

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. And do not let taking notes distract you from paying close attention to the evidence as it is presented. The Clerk will provide each of you with a pad of paper and a pen or pencil. At each recess, leave them on your chairs.

When you leave at night, your notes will be locked up and will not be read by anyone.

INSTRUCTION NO. 5 - BENCH CONFERENCES AND RECESSES

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. 6 - CONDUCT OF THE JURY

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 case 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 during the trial, please report it to the court security officer or courtroom deputy.

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, 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 about the parties, witnesses, participants, claims, evidence, or anything else related to this case. 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 an Internet chat room, blog, or other websites such as Facebook, MySpace, 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, or the court.

Seventh, do not read 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 about the case or about anyone involved with it. In fact, until the trial is over I suggest that you avoid reading any newspapers or news journals at all, 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 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.

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. 7 - OUTLINE OF TRIAL

The trial will proceed in the following manner:

First, the Plaintiffs' lawyer may make an opening statement. Next, the Defendants' lawyer 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 Plaintiffs will then present evidence. The Defendants' lawyer will have a chance to cross-examine the Plaintiffs' witnesses. After the Plaintiffs have finished presenting their case, the Defendants may present evidence, and the Plaintiffs' lawyer will have a chance to cross-examine their 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 closing arguments, I will instruct you further on the law, and you will go to the jury room to deliberate and decide on your verdict.

INSTRUCTION NO. 8 - BURDEN OF PROOF

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 - EXCESSIVE FORCE

Plaintiffs Tina Dean, Dairein Dean, Donmikeala Collins, and Dezaray Dean each claim that Defendant Jay Murray used excessive force against them on August 17, 2015. Plaintiff Haylee Heidt claims that both Defendants Jay Murray and Brian Jobgen used excessive force against her on August 17, 2015. The Defendant Officers deny these claims.

You must consider each Plaintiff's excessive force claim against each Defendant Officer separately. To win on his or her excessive force claim, the Plaintiff must prove all of the following elements:

First, the Defendant Officer used pepper spray and/or a baton on the Plaintiff when arresting or controlling the Plaintiff.

Second, the use of pepper spray and/or the baton was excessive because it was not reasonably necessary to arrest or control the Plaintiff.

Use of the pepper spray and/or the baton was excessive if it was not reasonably necessary to arrest or control the Plaintiff in the circumstances confronting the Defendant Officer. In deciding whether the use of pepper spray and/or the baton was reasonably necessary, you must consider the following factors:

- the need for the use of force, and the amount of force necessary to restrain or control the Plaintiff;
- the extent of the injury inflicted;
 - keep in mind that the same amount of force can cause more or less injury to different people in different circumstances;
- whether a reasonable officer on the scene, without the benefit of 20/20 hindsight, would have used that much force under similar circumstances;

- whether the decision about how much force to use was made in tense, uncertain, or rapidly changing circumstances;
- the Plaintiff's conduct at the time of the incident, including:
 - whether he or she was physically resisting restraint or being controlled;
 - even if you find that the Plaintiff was physically resisting, the force used must still be reasonable, applying all of the other factors; and
- whether the Plaintiff posed an immediate threat to the safety of himself or herself, the Defendant Officers, or others.

No one factor determines whether or not the force used was reasonably necessary. You must consider whether the force used was reasonably necessary in light of all of the factors.

You must not consider the Defendant Officer's state of mind, intention, or motivation.

Third, as a direct result of the use of force, the Plaintiff was injured.

Fourth, the Defendant Officer was acting under color of state law.

If the Plaintiff proves each of the above elements against the Defendant Officer, then your verdict must be for that Plaintiff. If any of the above elements has not been proved, then your verdict must be for the Defendant Officer.

INSTRUCTION NO. 10 – UNLAWFUL ARREST

Plaintiffs Dairein Dean and Donmikeala Collins each claim that Defendant Jay Murray “unlawfully arrested” —that is, arrested without probable cause—Dairein Dean and Donmikeala Collins during the incident on August 17, 2015. Defendant Officer Jay Murray denies these claims. You must consider each Plaintiff’s unlawful arrest claim against Defendant Officer Murray separately. To win on his or her unlawful arrest claim, the Plaintiff must prove the following elements:

First, Defendant Officer Murray arrested the Plaintiff.

“Arrest” means taking a person into custody. It includes restraint or detention of the person or his or her submission to custody. An arrest does not have to be accomplished by physical force or threats of physical force.

Second, the arrest was unlawful, that is, without probable cause.

An arrest is unlawful when, at the moment of the arrest, there is no probable cause for the officer to believe that a crime has been or is being committed.

“Probable cause” is a reasonable belief that a person has committed or is committing a crime. An officer’s belief is reasonable if the facts and circumstances within the officer’s knowledge, based on reasonably trustworthy information, would cause the officer to believe that the person has committed or is committing an offense.

Whether a belief is reasonable is determined by the circumstances existing and known or available to the officer when the person was arrested and not later investigation of the fact.

Probable cause does not require proof beyond a reasonable doubt, but only a showing of a fair probability of criminal activity. It must be more than bare suspicion, but need not reach the 50% mark.

Third, the arrest caused the Plaintiff damage.

Fourth, the Defendant Officer was acting under color of state law.

If the Plaintiff proves each of the above elements against Defendant Officer Murray, then your verdict must be for that Plaintiff. If any of the above elements has not been proved, then your verdict must be for Defendant Officer Murray.

INSTRUCTION NO. 11 – ELEMENTS FOR OFFENSES OF ARREST

To help you determine whether Defendant Officer Murray had probable cause to arrest Plaintiffs Dairein Dean and Donmikeala Collins, I will now instruct you on the elements of the crime for which Plaintiffs were arrested.

Dairein Dean and Donmikeala Collins were both arrested for interference with official acts, which has the following elements:

First, the Plaintiff knew Officer Murray was a peace officer who was attempting to arrest him/her or another individual; and

Second, the Plaintiff knowingly resisted or obstructed Officer Murray as he attempted to arrest him/her or another individual.

The terms “resisted” and “obstructed” do not include verbal harassment unless the verbal harassment is accompanied by the ability and apparent intent to execute a verbal threat physically.

Dairein Dean was also arrested for disorderly conduct, which can occur in three separate ways. The elements for each of the three alternatives for disorderly conduct are as follows:

Alternative 1:

First, the Plaintiff made threatening gestures or statements; and

Second, the Plaintiff knew or reasonably should have known such gestures or statements were likely to provoke a violent reaction in another individual.

OR

Alternative 2:

First, the Plaintiff made loud noise near a residence or public building;

Second, the occupants of the residence or public building were unreasonably distressed; and

Third, the Plaintiff’s loud noise caused the occupants to be unreasonably distressed.

OR

Alternative 3:

First, the Plaintiff engaged in fighting or violent behavior; and

Second, the Plaintiff engaged in such behavior in a public place.

INSTRUCTION NO. 12 - STIPULATED FACTS

The Plaintiffs and the Defendant Officers have stipulated – that is, they have agreed – that the following facts are true:

- The incident at issue occurred on August 17, 2015, near an alley at the corner of 18th and White Streets in Dubuque, Iowa; and
- At all times during this incident the Defendant Officers acted under color of state law.

You must, therefore, treat those facts as having been proved.

INSTRUCTION NO. 13 - ACTUAL DAMAGES

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.

If you find in favor of a Plaintiff on one or more of his or her claims, you must determine that Plaintiff's damages.

- “Damages” are the amount of money that will reasonably and fairly compensate the Plaintiff for any damage you find he or she sustained as a direct result of the Defendant Officer's violation of the Plaintiff's constitutional rights.
- It is for you to determine what damages, if any, have been proved.

You should consider the following elements of damages:

- the physical pain and mental or emotional suffering the Plaintiff has experienced:
 - physical pain and mental or emotional suffering are from the date of injury to the present time;
 - physical pain and mental or emotional suffering cannot be measured by any exact or mathematical standard;
 - physical pain may include, but is not limited to, bodily suffering or discomfort;
 - mental or emotional suffering may include, but are not limited to, mental anguish or loss of enjoyment of life;
- the nature and extent of the injury and whether the injury is temporary or permanent;
- the reasonable value of the medical care and supplies reasonably needed by and actually provided to the Plaintiff; and
- the wages, salary, profits or reasonable value of the working time the Plaintiff has lost because of his or her inability to work.

In determining damages, you must use your sound judgment based upon an impartial consideration of the evidence. Any damage award must be based upon evidence and not upon speculation, guesswork, or conjecture, and you must not award any damages by way of punishment or through sympathy. The amount you assess for damages must not exceed the amount caused by a party as proved by the evidence.

INSTRUCTION NO. 14 - PUNITIVE DAMAGES

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

If you find for a Plaintiff under his or her “excessive force” and/or “unlawful arrest” claims, and if it has been proved that the conduct of one or both Defendant Officers was malicious or recklessly indifferent to the Plaintiff’s rights, then you may, but are not required to, award the Plaintiff an additional amount of money as punitive damages to punish one or both Defendant Officers for engaging in misconduct and to discourage the Defendant Officers and others from engaging in similar misconduct in the future. You should presume that a Plaintiff has been made whole by his or her injuries by the damages awarded under Instruction No. 13.

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

- How reprehensible the conduct of one or both Defendant Officers was. In this regard, you may consider:
 - whether the harm suffered by the Plaintiff was physical or economic or both;
 - whether there was violence, deceit, intentional malice, or reckless disregard for human health or safety;
 - whether the conduct of one or both Defendant Officers that harmed the Plaintiff also caused harm or posed a risk of harm to others;
 - and
 - whether there was any repetition of the wrongful conduct and past conduct of the sort that harmed the Plaintiff.
- How much harm the Defendant Officer’s conduct caused the Plaintiff.
- What amount of punitive damages, in addition to other damages otherwise awarded, is needed, considering:
 - the Defendant Officer’s financial condition;

- to punish Defendant Officer for his wrongful conduct toward the Plaintiff; and
- to discourage the Defendant Officer and others from similar wrongful conduct in the future.
- The amount of fines and civil penalties applicable to similar conduct.

The amount of any punitive damages award should bear a reasonable relationship to the harm caused to the Plaintiff. You may award punitive damages against either or both Defendant Officers or you may refuse to award punitive damages. If punitive damages are awarded against more than one Defendant Officer, the amounts awarded against those Defendant Officers may be the same or they may be different.

INSTRUCTION NO. 15 - QUOTIENT VERDICT

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. 16 - ADDITIONAL 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. This is true even though I am not going to repeat some of the instructions I gave you at the beginning of or during the trial.

Remember, you have to follow all instructions, no matter when I give them, and whether or not you have written copies.

INSTRUCTION NO. 17 - JUDGE'S OPINION

I have not intended to suggest what I think your verdicts should be by any of my rulings or comments during the trial.

INSTRUCTION NO. 18 - DELIBERATIONS

There are rules you must follow when you go to the jury room to deliberate and return with your verdict.

First, you will select a 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 this without going against what you believe to be the truth, because all jurors have to agree on the verdict.

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


Do not be afraid to change your mind if the discussion persuades you that you should. But, do not come to a decision just because other jurors think it is right, or just to reach a verdict. Remember you are not for or against any party. You are judges – judges of the facts. Your only job is to study the evidence and decide what is true.

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 the 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 has to be based only on the evidence and on the law that I have given to you in my instructions. Nothing I have said or done was meant to suggest what I think your verdict should be. The verdict is entirely up to you.

Finally, the verdict form is your written decision in this case. You will take this form to the jury room, and when you have all agreed on the verdicts, your foreperson will fill in the form, sign and date it, and tell the court security officer that you are ready to return to the courtroom.

DATED this 24th day of July, 2017.



Kelly K.E. Mahoney
United States Magistrate Judge
Northern District of Iowa

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

TINA DEAN, Individually and as next of friend for her minor children DD, DC, and DZD; and TRACY MCGONIGLE, as next of friend for her minor child HH,

Plaintiffs,

vs.

JAY MURRAY and BRIAN JOBGEN, Individually and as police officers for the City of Dubuque Iowa,

Defendants.

No. 16-CV-1003-KEM

VERDICT FORM

1. TINA DEAN

A. LIABILITY – EXCESSIVE FORCE

On Tina Dean's excessive force claim as described in Instruction No. 9, we the jury unanimously find in favor of:

_____ Tina Dean **OR** _____ Jay Murray

If you found in favor of Tina Dean in 1A, complete 1B below. If you found in favor of Jay Murray in 1A, do not answer 1B and move to 2.

B. DAMAGES – EXCESSIVE FORCE

We the jury unanimously find Plaintiff Tina Dean's damages to be (state the amount of damages, or if none, write the word "none" in the appropriate blanks):

Actual damages:

\$ _____ Against Jay Murray

Punitive damages:

NOTE: You may not award punitive damages against Jay Murray unless you have first found against him and awarded Tina Dean actual damages.

\$ _____ Against Jay Murray

Please proceed to 2.

2. DAIREIN DEAN

A. LIABILITY – EXCESSIVE FORCE

On Dairein Dean’s excessive force claim as explained in Instruction No. 9, we the jury unanimously find in favor of:

_____ Dairein Dean **OR** _____ Jay Murray

If you found in favor of Dairein Dean in 2A, complete 2B below. If you found in favor of Jay Murray in 2A, do not answer 2B and move to 2C.

B. DAMAGES – EXCESSIVE FORCE

We the jury unanimously find Plaintiff Dairein Dean’s damages to be (state the amount of damages, or if none, write the word “none” in the appropriate blanks):

Actual damages:

\$ _____ Against Jay Murray

Punitive damages:

NOTE: You may not award punitive damages against Jay Murray unless you have first found against him and awarded Dairein Dean actual damages.

\$ _____ Against Jay Murray

Please proceed to 2C.

C. LIABILITY – UNLAWFUL ARREST

On Dairein Dean’s unlawful arrest claim as explained in Instruction No. 10, we the jury unanimously find in favor of:

_____ Dairein Dean **OR** _____ Jay Murray

If you found in favor of Dairein Dean in 2C, complete 2D below. If you found in favor of Jay Murray in 2C, do not answer 2D and move to 3.

D. DAMAGES – UNLAWFUL ARREST

We the jury unanimously find Plaintiff Dairein Dean’s damages to be (state the amount of damages, or if none, write the word “none” in the appropriate blanks):

Actual damages:

\$ _____ Against Jay Murray

Punitive damages:

NOTE: You may not award punitive damages against Jay Murray unless you have first found against him and awarded Dairein Dean actual damages.

\$ _____ Against Jay Murray

Please proceed to 3.

3. DONMIKEALA COLLINS

A. LIABILITY – EXCESSIVE FORCE

On Donmikeala Collins’ excessive force claim as explained in Instruction No. 9, we the jury unanimously find in favor of:

_____ Donmikeala Collins **OR** _____ Jay Murray

If you found in favor of Donmikeala Collins in 3A, complete 3B below. If you found in favor of Jay Murray in 3A, do not answer 3B and move to 3C.

B. DAMAGES – EXCESSIVE FORCE

We the jury unanimously find Plaintiff Donmikeala Collins’ damages to be (state the amount of damages, or if none, write the word “none” in the appropriate blanks):

Actual damages:

\$ _____ Against Jay Murray

Punitive damages:

NOTE: You may not award punitive damages against Jay Murray unless you have first found against him and awarded Donmikeala Collins actual damages.

\$ _____ Against Jay Murray

Please proceed to 3C.

C. LIABILITY – UNLAWFUL ARREST

On Donmikeala Collins’ unlawful arrest claim as explained in Instruction No. 10, we the jury unanimously find in favor of:

_____ Donmikeala Collins **OR** _____ Jay Murray

If you found in favor of Donmikeala Collins in 3C, complete 3D below. If you found in favor of Jay Murray in 3C, do not answer 3D and move to 4.

D. DAMAGES – UNLAWFUL ARREST

We the jury unanimously find Plaintiff Donmikeala Collins’ damages to be (state the amount of damages, or if none, write the word “none” in the appropriate blanks):

Actual damages:

\$ _____ Against Jay Murray

Punitive damages:

NOTE: You may not award punitive damages against Jay Murray unless you have first found against him and awarded Donmikeala Collins actual damages.

\$ _____ Against Jay Murray

Please proceed to 4.

4. DEZARAY DEAN

A. LIABILITY – EXCESSIVE FORCE

On Dezaray Dean’s excessive force claim as described in Instruction No. 9, we the jury unanimously find in favor of:

_____ Dezaray Dean **OR** _____ Jay Murray

If you found in favor of Dezaray Dean in 4A, complete 4B below. If you found in favor of Jay Murray in 4A, do not answer 4B and move to 5A.

B. DAMAGES – EXCESSIVE FORCE

We the jury unanimously find Plaintiff Dezaray Dean’s damages to be (state the amount of damages, or if none, write the word “none” in the appropriate blanks):

Actual damages:

\$ _____ Against Jay Murray

Punitive damages:

NOTE: You may not award punitive damages against Jay Murray unless you have first found against him and awarded Dezaray Dean actual damages.

\$ _____ Against Jay Murray

Please proceed to 5.

5. HAYLEE HEIDT – EXCESSIVE FORCE

A. LIABILITY

On Haylee Heidt’s excessive force claim against Jay Murray as described in Instruction No. 9, we the jury unanimously find in favor of:

_____ Haylee Heidt **OR** _____ Jay Murray

and

On Haylee Heidt’s excessive force claim against Brian Jobgen as described in Instruction No. 9, we the jury unanimously find in favor of:

_____ Haylee Heidt **OR** _____ Brian Jobgen

If you found in favor of Haylee Heidt in 5A against Jay Murray and/or Brian Jobgen, complete 5B below. If not, leave 5B blank and proceed to sign and date the Verdict Form.

B. DAMAGES

We the jury unanimously find Plaintiff Haylee Heidt's damages to be (state the amount of damages, or if none, write the word "none" in the appropriate blanks):

Actual damages:

\$ _____ Against Jay Murray

\$ _____ Against Brian Jobgen

Punitive damages:

NOTE: You may not award punitive damages against a defendant unless you have first found against that specific defendant and awarded Haylee Heidt actual damages.

\$ _____ Against Jay Murray

\$ _____ Against Brian Jobgen

Please sign and date the Verdict Form.

Date

Foreperson Signature

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

TINA DEAN, Individually and as next of friend for her minor children DD, DC, and DZD; and TRACY MCGONIGLE, as next of friend for her minor child HH,

Plaintiffs,

vs.

JAY MURRAY and BRIAN JOBGEN, Individually and as police officers for the City of Dubuque Iowa,

Defendants.

No. 16-CV-1003-KEM

**INSTRUCTIONS TO THE JURY
(July 25, 2017)**

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INSTRUCTION NO. 1 - INTRODUCTION

Ladies and Gentlemen: 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 - whether they are in writing or given to you orally – are equally important and you must follow them all.

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 deputy clerk or court security officer for safekeeping just before you start to deliberate. They will be returned to you when your deliberations are complete.

This is a civil case brought by the Plaintiffs, Tina Dean, individually and on behalf of her minor children Dairein Dean, Donmikeala Collins, and Dezaray Dean, and Tracy McGonigle on behalf of her minor child Haylee Heidt, against Defendants Jay Murray and Brian Jobgen. Tina Dean and Tracy McGonigle each bring claims as the parents of their minor child or children. Tina Dean also brings her own individual claim. Defendants are both officers of the Dubuque Police Department, so I will call them “Defendant Officers.” Plaintiffs claim that during an incident on or about August 17, 2015, the Defendant Officers violated the constitutional rights of Tina Dean, Dairein Dean, Donmikeala Collins, Dezaray Dean, and Haylee Heidt to be free from the use of “excessive force” by law enforcement officers. Tina Dean also claims that during the same incident, Defendant Officer Murray violated the constitutional rights of Dairein Dean and Donmikeala Collins to be free from unlawful arrest, that is arrest without probable cause. Plaintiffs seek money damages for the alleged violations of their constitutional rights. The Defendant Officers deny their claims. It will be your duty to decide from the evidence whether any Plaintiff is entitled to recover from any Defendant Officer.

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.

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 – whether private individuals or public officials, like law enforcement officers – stand equal before the law and are entitled to the same fair consideration.

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 your verdict should be.

INSTRUCTION NO. 2 - EVIDENCE

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 unless I specifically tell you otherwise.

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. You need to pay close attention when I give an instruction about evidence that you can consider for only certain purposes, because you might not have that instruction in writing later in the jury room.

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 direct and circumstantial evidence.

INSTRUCTION NO. 3 - CREDIBILITY OF WITNESSES

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.

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. 4 – NOTE-TAKING

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. And do not let taking notes distract you from paying close attention to the evidence as it is presented. The Clerk will provide each of you with a pad of paper and a pen or pencil. At each recess, leave them on your chairs.

When you leave at night, your notes will be locked up and will not be read by anyone.

INSTRUCTION NO. 5 - BENCH CONFERENCES AND RECESSES

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. 6 - CONDUCT OF THE JURY

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 case 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 during the trial, please report it to the court security officer or courtroom deputy.

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, 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 about the parties, witnesses, participants, claims, evidence, or anything else related to this case. 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 an Internet chat room, blog, or other websites such as Facebook, MySpace, 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, or the court.

Seventh, do not read 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 about the case or about anyone involved with it. In fact, until the trial is over I suggest that you avoid reading any newspapers or news journals at all, 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 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.

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. 7 - OUTLINE OF TRIAL

The trial will proceed in the following manner:

First, the Plaintiffs' lawyer may make an opening statement. Next, the Defendants' lawyer 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 Plaintiffs will then present evidence. The Defendants' lawyer will have a chance to cross-examine the Plaintiffs' witnesses. After the Plaintiffs have finished presenting their case, the Defendants may present evidence, and the Plaintiffs' lawyer will have a chance to cross-examine their 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 closing arguments, I will instruct you further on the law, and you will go to the jury room to deliberate and decide on your verdict.

INSTRUCTION NO. 8 - BURDEN OF PROOF

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 - EXCESSIVE FORCE

Plaintiffs Tina Dean, Dairein Dean, Donmikeala Collins, and Dezaray Dean each claim that Defendant Jay Murray used excessive force against them on August 17, 2015. Plaintiff Haylee Heidt claims that both Defendants Jay Murray and Brian Jobgen used excessive force against her on August 17, 2015. The Defendant Officers deny these claims.

You must consider each Plaintiff's excessive force claim against each Defendant Officer separately. To win on his or her excessive force claim, the Plaintiff must prove all of the following elements:

First, the Defendant Officer used pepper spray and/or a baton on the Plaintiff when arresting or controlling the Plaintiff.

Second, the use of pepper spray and/or the baton was excessive because it was not reasonably necessary to arrest or control the Plaintiff.

Use of the pepper spray and/or the baton was excessive if it was not reasonably necessary to arrest or control the Plaintiff in the circumstances confronting the Defendant Officer. In deciding whether the use of pepper spray and/or the baton was reasonably necessary, you must consider the following factors:

- the need for the use of force, and the amount of force necessary to restrain or control the Plaintiff;
- the extent of the injury inflicted;
 - keep in mind that the same amount of force can cause more or less injury to different people in different circumstances;
- whether a reasonable officer on the scene, without the benefit of 20/20 hindsight, would have used that much force under similar circumstances;

- whether the decision about how much force to use was made in tense, uncertain, or rapidly changing circumstances;
- the Plaintiff's conduct at the time of the incident, including:
 - whether he or she was physically resisting restraint or being controlled;
 - even if you find that the Plaintiff was physically resisting, the force used must still be reasonable, applying all of the other factors; and
- whether the Plaintiff posed an immediate threat to the safety of himself or herself, the Defendant Officers, or others.

No one factor determines whether or not the force used was reasonably necessary. You must consider whether the force used was reasonably necessary in light of all of the factors.

You must not consider the Defendant Officer's state of mind, intention, or motivation.

Third, as a direct result of the use of force, the Plaintiff was injured.

Fourth, the Defendant Officer was acting under color of state law.

If the Plaintiff proves each of the above elements against the Defendant Officer, then your verdict must be for that Plaintiff. If any of the above elements has not been proved, then your verdict must be for the Defendant Officer.

INSTRUCTION NO. 10 – UNLAWFUL ARREST

Plaintiffs Dairein Dean and Donmikeala Collins each claim that Defendant Jay Murray “unlawfully arrested” —that is, arrested without probable cause—Dairein Dean and Donmikeala Collins during the incident on August 17, 2015. Defendant Officer Jay Murray denies these claims. You must consider each Plaintiff’s unlawful arrest claim against Defendant Officer Murray separately. To win on his or her unlawful arrest claim, the Plaintiff must prove the following elements:

First, Defendant Officer Murray arrested the Plaintiff.

“Arrest” means taking a person into custody. It includes restraint or detention of the person or his or her submission to custody. An arrest does not have to be accomplished by physical force or threats of physical force.

Second, the arrest was unlawful, that is, without probable cause.

An arrest is unlawful when, at the moment of the arrest, there is no probable cause for the officer to believe that a crime has been or is being committed.

“Probable cause” is a reasonable belief that a person has committed or is committing a crime. An officer’s belief is reasonable if the facts and circumstances within the officer’s knowledge, based on reasonably trustworthy information, would cause the officer to believe that the person has committed or is committing an offense.

Whether a belief is reasonable is determined by the circumstances existing and known or available to the officer when the person was arrested and not later investigation of the fact.

Probable cause does not require proof beyond a reasonable doubt, but only a showing of a fair probability of criminal activity. It must be more than bare suspicion, but need not reach the 50% mark.

Third, the arrest caused the Plaintiff damage.

Fourth, the Defendant Officer was acting under color of state law.

If the Plaintiff proves each of the above elements against Defendant Officer Murray, then your verdict must be for that Plaintiff. If any of the above elements has not been proved, then your verdict must be for Defendant Officer Murray.

INSTRUCTION NO. 11 – ELEMENTS FOR OFFENSES OF ARREST

To help you determine whether Defendant Officer Murray had probable cause to arrest Plaintiffs Dairein Dean and Donmikeala Collins, I will now instruct you on the elements of the crimes for which Plaintiffs were arrested.

Dairein Dean and Donmikeala Collins were both arrested for **interference with official acts**, which has the following elements:

First, the Plaintiff knew Officer Murray was a peace officer who was attempting to arrest Dairein Dean and/or who ordered Plaintiff to disperse or back away; and

Second, the Plaintiff knowingly resisted or obstructed Officer Murray as he attempted to arrest Dairein Dean and/or as he ordered Plaintiff to disperse or back away.

The terms “resisted” and “obstructed” do not include verbal harassment unless the verbal harassment is accompanied by the ability and apparent intent to execute a verbal threat physically.

The terms “resisted” and “obstructed” also do not include the mere failure to cooperate or passive objection to an officer’s orders unless the failure to cooperate or passive objection hinders the officer’s ability to carry out his duties.

Dairein Dean was also arrested for **disorderly conduct**. The elements for disorderly conduct are as follows:

First, the Plaintiff made threatening gestures or statements; and

Second, the Plaintiff knew or reasonably should have known such gestures or statements were likely to provoke a violent reaction in another individual.

INSTRUCTION NO. 11A - RIGHT TO QUESTION OFFICERS

People have a constitutional right to question or comment to a police officer in certain circumstances, including:

- to tell the officer that the officer does not have the right to arrest another individual and that the individual did nothing wrong; and
- to yell profanities so long as the person does not threaten the officer in a manner likely to incite violence and does not interfere with the officer exercising his duties.

This right does not apply in all circumstances. People do not have a right to question or comment to a police officer in the following circumstances:

- to use words or conduct that may incite violence; and
- to make statements in a manner that interferes with the officer's ability to perform the officer's duties.

INSTRUCTION NO. 12 - STIPULATED FACTS

The Plaintiffs and the Defendant Officers have stipulated – that is, they have agreed – that the following facts are true:

- The incident at issue occurred on August 17, 2015, near an alley at the corner of 18th and White Streets in Dubuque, Iowa; and
- At all times during this incident the Defendant Officers acted under color of state law.

You must, therefore, treat those facts as having been proved.

INSTRUCTION NO. 13 - ACTUAL DAMAGES

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.

If you find in favor of a Plaintiff on one or more of his or her claims, you must determine that Plaintiff's damages.

- “Damages” are the amount of money that will reasonably and fairly compensate the Plaintiff for any damage you find he or she sustained as a direct result of the Defendant Officer's violation of the Plaintiff's constitutional rights.
- It is for you to determine what damages, if any, have been proved.

You should consider the following elements of damages:

- the physical pain and mental or emotional suffering the Plaintiff has experienced:
 - physical pain and mental or emotional suffering are from the date of injury to the present time;
 - physical pain and mental or emotional suffering cannot be measured by any exact or mathematical standard;
 - physical pain may include, but is not limited to, bodily suffering or discomfort;
 - mental or emotional suffering may include, but are not limited to, mental anguish or loss of enjoyment of life;
- the nature and extent of the injury and whether the injury is temporary or permanent;
- the reasonable value of the medical care and supplies reasonably needed by and actually provided to the Plaintiff; and
- the wages, salary, profits or reasonable value of the working time the Plaintiff has lost because of his or her inability to work.

In determining damages, you must use your sound judgment based upon an impartial consideration of the evidence. Any damage award must be based upon evidence and not upon speculation, guesswork, or conjecture, and you must not award any damages by way of punishment or through sympathy. The amount you assess for damages must not exceed the amount caused by a party as proved by the evidence.

INSTRUCTION NO. 14 - PUNITIVE DAMAGES

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

If you find for a Plaintiff under his or her “excessive force” and/or “unlawful arrest” claims, and if it has been proved that the conduct of one or both Defendant Officers was malicious or recklessly indifferent to the Plaintiff’s rights, then you may, but are not required to, award the Plaintiff an additional amount of money as punitive damages to punish one or both Defendant Officers for engaging in misconduct and to discourage the Defendant Officers and others from engaging in similar misconduct in the future. You should presume that a Plaintiff has been made whole by his or her injuries by the damages awarded under Instruction No. 13.

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

- How reprehensible the conduct of one or both Defendant Officers was. In this regard, you may consider:
 - whether the harm suffered by the Plaintiff was physical or economic or both;
 - whether there was violence, deceit, intentional malice, or reckless disregard for human health or safety;
 - whether the conduct of one or both Defendant Officers that harmed the Plaintiff also caused harm or posed a risk of harm to others; and
 - whether there was any repetition of the wrongful conduct and past conduct of the sort that harmed the Plaintiff.
- How much harm the Defendant Officer’s conduct caused the Plaintiff.
- What amount of punitive damages, in addition to other damages otherwise awarded, is needed, considering:
 - the Defendant Officer’s financial condition;

- to punish Defendant Officer for his wrongful conduct toward the Plaintiff; and
- to discourage the Defendant Officer and others from similar wrongful conduct in the future.
- The amount of fines and civil penalties applicable to similar conduct.

The amount of any punitive damages award should bear a reasonable relationship to the harm caused to the Plaintiff. You may award punitive damages against either or both Defendant Officers or you may refuse to award punitive damages. If punitive damages are awarded against more than one Defendant Officer, the amounts awarded against those Defendant Officers may be the same or they may be different.

INSTRUCTION NO. 15 - QUOTIENT VERDICT

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. 16 - ADDITIONAL 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. This is true even though I am not going to repeat some of the instructions I gave you at the beginning of or during the trial.

Remember, you have to follow all instructions, no matter when I give them, and whether or not you have written copies.

INSTRUCTION NO. 17 - JUDGE'S OPINION

I have not intended to suggest what I think your verdicts should be by any of my rulings or comments during the trial.

INSTRUCTION NO. 18 - DELIBERATIONS

There are rules you must follow when you go to the jury room to deliberate and return with your verdict.

First, you will select a 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 this without going against what you believe to be the truth, because all jurors have to agree on the verdict.

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

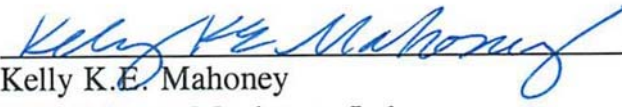
Do not be afraid to change your mind if the discussion persuades you that you should. But, do not come to a decision just because other jurors think it is right, or just to reach a verdict. Remember you are not for or against any party. You are judges – judges of the facts. Your only job is to study the evidence and decide what is true.

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 the 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 has to be based only on the evidence and on the law that I have given to you in my instructions. Nothing I have said or done was meant to suggest what I think your verdict should be. The verdict is entirely up to you.

Finally, the verdict form is your written decision in this case. You will take this form to the jury room, and when you have all agreed on the verdicts, your foreperson will fill in the form, sign and date it, and tell the court security officer that you are ready to return to the courtroom.

DATED this 25th day of July, 2017.



Kelly K.E. Mahoney
United States Magistrate Judge
Northern District of Iowa

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

TINA DEAN, Individually and as next of friend for her minor children DD, DC, and DZD; and TRACY MCGONIGLE, as next of friend for her minor child HH,

Plaintiffs,

vs.

JAY MURRAY and BRIAN JOBGEN, Individually and as police officers for the City of Dubuque Iowa,

Defendants.

No. 16-CV-1003-KEM

VERDICT FORM

1. TINA DEAN

A. LIABILITY – EXCESSIVE FORCE

On Tina Dean’s excessive force claim as described in Instruction No. 9, we the jury unanimously find in favor of:

_____ Tina Dean **OR** _____ Jay Murray

If you found in favor of Tina Dean in 1A, complete 1B below. If you found in favor of Jay Murray in 1A, do not answer 1B and move to 2.

B. DAMAGES – EXCESSIVE FORCE

We the jury unanimously find Plaintiff Tina Dean’s damages to be (state the amount of damages, or if none, write the word “none” in the appropriate blanks):

Actual damages:

\$ _____ Against Jay Murray

Punitive damages:

NOTE: You may not award punitive damages against Jay Murray unless you have first found against him and awarded Tina Dean actual damages.

\$ _____ Against Jay Murray

Please proceed to 2.

2. DAIREIN DEAN

A. LIABILITY – EXCESSIVE FORCE

On Dairein Dean’s excessive force claim as explained in Instruction No. 9, we the jury unanimously find in favor of:

_____ Dairein Dean **OR** _____ Jay Murray

If you found in favor of Dairein Dean in 2A, complete 2B below. If you found in favor of Jay Murray in 2A, do not answer 2B and move to 2C.

B. DAMAGES – EXCESSIVE FORCE

We the jury unanimously find Plaintiff Dairein Dean’s damages to be (state the amount of damages, or if none, write the word “none” in the appropriate blanks):

Actual damages:

\$ _____ Against Jay Murray

Punitive damages:

NOTE: You may not award punitive damages against Jay Murray unless you have first found against him and awarded Dairein Dean actual damages.

\$ _____ Against Jay Murray

Please proceed to 2C.

C. LIABILITY – UNLAWFUL ARREST

On Dairein Dean’s unlawful arrest claim as explained in Instruction No. 10, we the jury unanimously find in favor of:

_____ Dairein Dean **OR** _____ Jay Murray

If you found in favor of Dairein Dean in 2C, complete 2D below. If you found in favor of Jay Murray in 2C, do not answer 2D and move to 3.

D. DAMAGES – UNLAWFUL ARREST

We the jury unanimously find Plaintiff Dairein Dean’s damages to be (state the amount of damages, or if none, write the word “none” in the appropriate blanks):

Actual damages:

\$ _____ Against Jay Murray

Punitive damages:

NOTE: You may not award punitive damages against Jay Murray unless you have first found against him and awarded Dairein Dean actual damages.

\$ _____ Against Jay Murray

Please proceed to 3.

3. DONMIKEALA COLLINS

A. LIABILITY – EXCESSIVE FORCE

On Donmikeala Collins’ excessive force claim as explained in Instruction No. 9, we the jury unanimously find in favor of:

_____ Donmikeala Collins **OR** _____ Jay Murray

If you found in favor of Donmikeala Collins in 3A, complete 3B below. If you found in favor of Jay Murray in 3A, do not answer 3B and move to 3C.

B. DAMAGES – EXCESSIVE FORCE

We the jury unanimously find Plaintiff Donmikeala Collins’ damages to be (state the amount of damages, or if none, write the word “none” in the appropriate blanks):

Actual damages:

\$ _____ Against Jay Murray

Punitive damages:

NOTE: You may not award punitive damages against Jay Murray unless you have first found against him and awarded Donmikeala Collins actual damages.

\$ _____ Against Jay Murray

Please proceed to 3C.

C. LIABILITY – UNLAWFUL ARREST

On Donmikeala Collins’ unlawful arrest claim as explained in Instruction No. 10, we the jury unanimously find in favor of:

_____ Donmikeala Collins **OR** _____ Jay Murray

If you found in favor of Donmikeala Collins in 3C, complete 3D below. If you found in favor of Jay Murray in 3C, do not answer 3D and move to 4.

D. DAMAGES – UNLAWFUL ARREST

We the jury unanimously find Plaintiff Donmikeala Collins’ damages to be (state the amount of damages, or if none, write the word “none” in the appropriate blanks):

Actual damages:

\$ _____ Against Jay Murray

Punitive damages:

NOTE: You may not award punitive damages against Jay Murray unless you have first found against him and awarded Donmikeala Collins actual damages.

\$ _____ Against Jay Murray

Please proceed to 4.

4. DEZARAY DEAN

A. LIABILITY – EXCESSIVE FORCE

On Dezaray Dean’s excessive force claim as described in Instruction No. 9, we the jury unanimously find in favor of:

_____ Dezaray Dean **OR** _____ Jay Murray

If you found in favor of Dezaray Dean in 4A, complete 4B below. If you found in favor of Jay Murray in 4A, do not answer 4B and move to 5A.

B. DAMAGES – EXCESSIVE FORCE

We the jury unanimously find Plaintiff Dezaray Dean’s damages to be (state the amount of damages, or if none, write the word “none” in the appropriate blanks):

Actual damages:

\$ _____ Against Jay Murray

Punitive damages:

NOTE: You may not award punitive damages against Jay Murray unless you have first found against him and awarded Dezaray Dean actual damages.

\$ _____ Against Jay Murray

Please proceed to 5.

5. HAYLEE HEIDT – EXCESSIVE FORCE

A. LIABILITY

On Haylee Heidt’s excessive force claim against Jay Murray as described in Instruction No. 9, we the jury unanimously find in favor of:

_____ Haylee Heidt **OR** _____ Jay Murray

and

On Haylee Heidt’s excessive force claim against Brian Jobgen as described in Instruction No. 9, we the jury unanimously find in favor of:

_____ Haylee Heidt **OR** _____ Brian Jobgen

If you found in favor of Haylee Heidt in 5A against Jay Murray and/or Brian Jobgen, complete 5B below. If not, leave 5B blank and proceed to sign and date the Verdict Form.

B. DAMAGES

We the jury unanimously find Plaintiff Haylee Heidt's damages to be (state the amount of damages, or if none, write the word "none" in the appropriate blanks):

Actual damages:

\$ _____ Against Jay Murray

\$ _____ Against Brian Jobgen

Punitive damages:

NOTE: You may not award punitive damages against a defendant unless you have first found against that specific defendant and awarded Haylee Heidt actual damages.

\$ _____ Against Jay Murray

\$ _____ Against Brian Jobgen

Please sign and date the Verdict Form.

Date

Foreperson Signature