

Court's 10/25/2013 Working Draft
Preliminary Instructions

K. PRELIMINARY INSTRUCTIONS

COURT'S JURY INSTRUCTION NO. 1.01 GENERAL: NATURE OF CASE; BURDEN OF PROOF; DUTY OF JURY; CAUTIONARY

Ladies and gentlemen of the jury: I will take a few moments now to give you some initial instructions about this case and about your duties as jurors. During the trial, I will give you more instructions. And at the end of the trial, I will give you further instructions. Unless I specifically tell you otherwise, all these instructions – both those I give you now and those I give you later – are equally binding on you and must be followed.

In this case, I am the judge of the law and the jury is the judge of the facts. As the judge of the facts, it is your duty to determine the true facts from the evidence and the reasonable inferences arising from the evidence. In making your factual determinations, you must not engage in guess work or speculation.

As I explained during *voir dire*, this is a civil case brought by Kevin Linn against Chad Mason. Mr. Linn alleges that Deputy Sheriff Mason used excessive force against him while Linn was being held at the Van Buren County Jail. Mason denies that allegation. The jury will decide, after hearing

all the evidence, what happened in the encounter between Linn and Mason and whether the United States Constitution was violated.

The Eighth Amendment to the United States Constitution prohibits cruel and unusual punishment. In particular, it prohibits the use of excessive force against someone in custody. Whether force is excessive depends on the totality of the circumstances—the need for the application of force; the relationship between the need and the amount of force used; the extent of the injury inflicted; and whether the force was used to achieve a legitimate purpose or maliciously and sadistically for the purpose of causing harm. Linn must prove by a preponderance of the evidence that Mason used force against him, that the force was excessive, and that as a result Linn was injured.

This case should be considered and decided by you as a dispute 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 treated as equals.

It will be your duty to decide from the evidence whether Linn is entitled to a verdict against Mason.

From the evidence you will decide what the facts are. You are entitled

to consider that evidence in the light of your own observations and experiences in the affairs of life. You will then apply those facts to the law that I give you in these and in my other instructions, and in that way reach your verdict. While you are the sole judges of the facts; you must follow the law, as stated in my instructions, whether you agree with it or not.

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 motives they may have for testifying a certain way, their manner while testifying, whether they said something different at an earlier time, the general reasonableness of their testimony, and the extent to which their testimony is consistent with other evidence that you believe.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

You should not take anything I may say or do during the trial as

indicating what I think of the evidence or what I think your verdict should be.

COURT'S JURY INSTRUCTION NO. 1.02
EVIDENCE: LIMITATIONS

I have mentioned the word "evidence." "Evidence" includes the testimony of witnesses; documents and other things received as exhibits; and any facts that have been stipulated – which means the parties have formally agreed on some facts.

Certain things are not evidence. I will list those things for you now:

1. Statements, arguments, questions, and comments by lawyers are not evidence.

2. Objections are not evidence. Lawyers have a right and sometimes a duty to object or to move that certain evidence that has already been received be stricken. If such an objection or such a motion to strike is made, it will be my duty, as judge, to rule on the matter and determine whether you jurors may take into consideration the challenged evidence. You are not to concern yourself with the reasons for the attorneys' objections or motions to strike or with the reasons for the Court's rulings. You also should not be influenced by the objection or the motion to strike.

If I sustain an objection to a question or an exhibit, you must ignore the question or the exhibit and must not try to guess what the information might

have been. Similarly, testimony and exhibits that I strike from the record, or tell you to disregard, are not evidence and must not be considered.

3. Anything you see or hear about this case outside the courtroom is not evidence. Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other purpose. I will tell you when that occurs and instruct you on the purposes for which the item can and cannot be used.

Finally, some of you may have heard the terms “direct evidence” and “circumstantial evidence.” You are instructed that you should not be concerned with those terms, because the law makes no distinction between the weight to be given to direct and circumstantial evidence.

**COURT'S JURY INSTRUCTION NO. 1.03
BENCH CONFERENCES**

During the trial it may be necessary for me to speak with the lawyers out of your hearing, either by having a bench conference here while you are present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the Rules of Evidence, which govern the trial, and to avoid confusion and error. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

**COURT'S JURY INSTRUCTION NO. 1.04
NO TRANSCRIPT AVAILABLE/NOTE-TAKING**

At the end of the trial you must make your decision based on what you recall of the evidence. You will not have a written transcript to consult. You must pay close attention to the testimony as it is given.

If you wish, however, you may take notes to help you remember what witnesses said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. And do not let note-taking distract you so that you do not hear other answers by the witness. The Clerk will provide each of you with a pad of paper and a pencil. At each recess, leave your notes in your chair.

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

**COURT'S JURY INSTRUCTION NO. 1.05
CONDUCT OF THE JURY**

Finally, to insure fairness, you as jurors must obey the following rules:

First, as jurors, I do not want you to talk among yourselves about this case, or about anyone involved with the case, until the end of the case when you go to the jury room to deliberate and decide on 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. If someone does try to talk to you about the case during the trial, please report it to me immediately.

Fourth, during the trial you should not talk with or speak to any of the parties, lawyers or witnesses involved in this case – you should not even pass the time of day with any of them. It is important not only that you do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the lawsuit sees you talking to a person from the other side – even if it is simply to pass the time of day – an unwarranted and

unnecessary suspicion about your fairness might be aroused. If any lawyer, party or witness does not speak to you when you pass in the hall, ride the elevator, or the like, remember it is because they are not supposed to talk or visit with you.

Fifth, do not read any news stories or articles about the case or about anyone involved with it, or listen to any radio or television reports about the case or about anyone involved with it.

Sixth, do not do any research or make any investigation about the case on your own about any matter involved in this case. By way of example, that means that you must not consult the Internet (e.g., Google or Google Maps), a dictionary, textbook, encyclopedia, or talk with a person you consider knowledgeable. In fairness, you must only learn about this case from the evidence you receive here at the trial and apply those facts to the law as I give it to you.

Seventh, remember, cell phones are not permitted in the courtroom or in the jury room.

Eighth, keep an open mind during the trial about what the verdict should be. Keep an open mind until after you have heard all of the evidence.

Once the trial has been completed and you have retired to the jury room to decide the case, you and your fellow jurors are free to discuss the evidence among yourselves.

Ninth, remember that you are not to be influenced in any degree by any personal feelings or sympathy or prejudice for or against any of the parties or the attorneys in the case. Each party is entitled to the same fair and impartial consideration at your hands.

Tenth, no statement, remark, or ruling that I make or question that I might ask of a witness during the course of the trial is intended to indicate how I feel about the facts of the case. You, as the jurors, are the sole judges of the facts of the case. You and you alone will have to decide upon the believability and credibility of the witnesses and the weight and value of the evidence.

Finally, from time to time during the course of the trial there will be recesses during which you will be permitted to leave the jury box and go your separate ways, and I want to advise you now, in case I forget to do so on those many different occasions, that until this case is turned over to you for your deliberations near the very end of the trial, you are not to discuss it among

yourselves, or with any one else, or permit anyone to discuss it in your presence. Let me repeat that. Until this case is turned over to you for your deliberations near the end of the trial, you are not to discuss it among yourselves, or with anyone else, or permit anyone to discuss it in your presence.

Under your oaths you are obligated to keep an open mind on all of the factual issues in the case until you have heard, seen, or otherwise experienced all of the evidence, and until you have had the benefit of the arguments of the attorneys and have received the Court's final instructions as to the law.

COURT'S JURY INSTRUCTION NO. 1.05A

**EXPANDED INSTRUCTION RE: JURY PROHIBITION ON
ELECTRONIC COMMUNICATIONS/RESEARCH**

Now it may be necessary for you to tell your family, friends, teachers, coworkers, or employer about your participation in this trial so that you can let them know you are required to be in court. You should warn them not to ask you about this case, not to tell you anything they know or think they know about this case, and not to discuss this case in your presence. You must not communicate with anyone about the parties, witnesses, participants, claims, evidence, or anything else related to this case, or 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.

During the trial, while you are in the courthouse and after you leave for the day, do not provide any information to anyone by any means about this case. For example, do not talk face-to-face or use any electronic device or media, such as the telephone, a cell phone, a smart phone, Blackberry, PDA, computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog, or website such as Facebook, MySpace, YouTube, or Twitter, to communicate to anyone any information about this

case until I accept your verdict.

Do not do any Internet research— not on the Internet using Google or Bing, for example. Do not do any research by using libraries, reading the newspapers, or in any other way making any investigation about this case on your own. Do not visit or view any place discussed in this case and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony. Also do not research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or me.

Ask each juror: Juror No. —, on your oath, do you promise not to post anything about your jury service on any social media website such as Facebook, Twitter, Myspace, or the like during the trial? On your oath, do you promise not to use the internet to look up anything about the case, the medical matters discussed, the lawyers, Linn, Mason, me, or the law?

Do not read any news stories or articles in print, on the Internet, or in any blog, about the case or about anyone involved with it, or 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 tv or radio newscasts at all. I do not know whether there might be any news reports of this case, but if there are, you might inadvertently find yourself reading or listening to something before you could do anything about it. If you want, you can have your spouse or a friend clip out any stories and set them aside to give you after the trial is over. I can assure you, however, that by the time you have heard the evidence in this case, you will know more about the matter than anyone will learn through the news media.

Finally, I want to reiterate that, before the trial is over, you are bound by your oaths not to discuss the evidence with anyone—not even with a member of your family. And I think you can understand the fairness and reasonableness of that rule because when we start discussing the evidence and explaining the proof, there is a tendency to start making up our minds, and you jurors are bound by your oaths to keep an open mind on all of the material issues in the case until you have heard, seen, or otherwise experienced all of the evidence, not just some of it; until you have received the court's final instructions as to the law; and until you have had the benefit of the closing arguments of the attorneys.

COURT'S INSTRUCTION NO. 1.06

OUTLINE OF TRIAL

The trial will proceed in the following manner:

First, Linn will make an opening statement. Next, Mason's lawyer will make an opening statement. An opening statement is not evidence but is simply a summary of what the attorney expects the evidence to be.

Linn will then present evidence by calling witnesses, and Mason's lawyers may cross-examine those witnesses. Following Linn's case, Mason may present evidence by calling witnesses, and Linn may cross-examine those witnesses.

Finally, Linn may offer rebuttal evidence.

After presentation of evidence is completed, the attorneys will then have a second opportunity to address you directly, and on that second occasion, they are permitted to argue to you the evidence in an attempt to persuade you to their differing views of the true facts of the case. As with opening statements, closing arguments are not evidence.

After hearing closing arguments, the Court will give you the final instructions on the law. Then you will retire to the jury room to deliberate on

your verdict.

Court's 10/25/2013 Working Draft
Final Instructions

INSTRUCTION NO. 1

Members of the Jury, the instructions I gave you at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions on the law that applies to this case. You must, of course, continue to follow all the instructions I gave you earlier, as well those I give you now.

The instructions I am about to give you now are in writing and will be available to you in writing in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all my instructions, whether given in writing or spoken from this bench, must be followed.

It is your duty as jurors to follow the law as stated in the instructions, and to apply the given rules of law to the facts as you find them to be from the evidence in this case.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

Neither are you to be concerned with the wisdom of any rule of law as stated by the Court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict

upon any other view of the law other than that given in the instructions of the Court; just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything but the evidence in the case.

Nothing I say in the instructions is to be taken as an indication that I have any opinion about the facts of the case, or what that opinion is. It is not my function to determine the facts. You will determine the facts. During this trial I have occasionally asked questions of witnesses. Do not assume that because I asked questions I hold any opinion on the matters to which my questions related.

Justice through trial by jury must always depend on the willingness of each individual juror to seek the truth about the facts from the same evidence presented to all the jurors; and to arrive at a verdict by applying the same rules of law as given in the Court's instructions.

Statements and arguments of counsel are not evidence in the case. When the lawyers on both sides stipulate or agree on the existence of a fact, however, the Jury must accept the stipulation and regard that fact as proved. The evidence in the case always consists of the sworn testimony of the witnesses, regardless of who may have called them and any documents,

photographs, or other items that are received by the Court, and all facts that may have been admitted or stipulated. Any evidence on which an objection was sustained by the Court – and any witness statement or tangible item that was stricken by the Court – must be entirely disregarded.

Anything you may have seen or heard outside this courtroom is not evidence, and it must be entirely disregarded.

INSTRUCTION NO. 2

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 all 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, you may send a note to me, through the court security officer, that is signed

by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should never tell anyone – including me – how your votes stand numerically.

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

INSTRUCTION NO. 3

This case should be considered and decided by you as a dispute 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 treated as equals.

INSTRUCTION NO. 4

You are the sole judges of the credibility of the witnesses and the weight and value to be given to their testimony. 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.

In deciding what testimony to believe, you may consider the witness's intelligence; the opportunity the witness had to see or hear the things about which he or she testified; the witness's memory; any motives a witness may have for testifying a certain way; the manner and demeanor of the witness while testifying; whether the witness said something different at an earlier time; the general reasonableness or unreasonableness of the testimony; and the extent to which the testimony is consistent with any other evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent

misrecollection, lapse of memory, or an intentional falsehood – and that may depend on whether it has to do with an important fact or only a small detail.

You have heard evidence that plaintiff Kevin Linn has been convicted of a crime. You may use that evidence only to help you decide whether to believe Linn and how much weight to give his testimony. [The Court is still researching this issue under Fed. R. Evid. 609(a)(1)(A) and 403.]

INSTRUCTION NO. 5

A witness may be discredited or impeached by contradictory evidence or by evidence that at some other time the witness has said or done something, or has failed to say or do something that is inconsistent with the witness's present testimony.

If you believe any witness has been impeached and thus discredited, you may give the testimony of that witness whatever credibility, if any, you think it deserves.

If a witness is shown knowingly to have testified falsely about any material matter, you have a right to distrust that witness' other testimony and you may reject all the testimony of that witness or give it whatever credibility you think it deserves.

An act or omission is "knowingly" done, if the act is done voluntarily or intentionally, and not because of mistake or accident or other innocent reason.

INSTRUCTION NO. 6

In considering the evidence in this case you are not required to set aside your common sense or common knowledge. You have the right to consider all the evidence in light of your own observations and experiences in the affairs of life.

INSTRUCTION NO. 7

In these instructions you are told that one or the other party has the burden to prove certain facts. The burden of proving a fact is placed upon the party whose claim or defense depends upon that fact. The party who has the burden of proving a fact must prove it by a preponderance of the evidence. To prove something by the “preponderance of the evidence” is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable.

If, on any issue of fact in the case, the evidence is equally balanced, you cannot find that fact has been proved. The preponderance of the evidence is not necessarily established by the greater number of witnesses or exhibits a party has presented.

You may have heard of the term “proof beyond a reasonable doubt.” This is a stricter standard, which applies in criminal cases. It does not apply in civil cases like this one. You should, therefore, put it out of your minds.

INSTRUCTION NO. 8

Your verdict must be for Kevin Linn and against Chad Mason on Linn's claim of excessive use of force if Linn has proved all the following elements:

First, Mason used pepper spray or deployed his taser against Linn; and

Second, the force used was excessive and applied maliciously and sadistically for the purpose of causing harm, not in a good faith effort to achieve a legitimate purpose; and

Third, as a direct result, Linn was injured.

In determining whether the force was excessive, you must consider several things: 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 the force was used to achieve a legitimate purpose or maliciously and sadistically for the purpose of causing harm.

"Maliciously" means intentionally injuring another without just cause or reason. "Sadistically" means engaging in extreme or excessive cruelty or delighting in cruelty.

If Linn has not proved any of the three elements, then your verdict must be for Mason.

INSTRUCTION NO. 9

If you find in favor of Linn, then you must award him an amount of money that will fairly compensate him for any damages you find he sustained and is reasonably certain to sustain in the future as a direct result of the conduct that violated Linn's constitutional rights. You should consider the following elements of damages:

1. The physical pain and mental emotional suffering Linn has experienced and is reasonably certain to experience in the future; the nature and extent of the injury, whether the injury is temporary or permanent; and
2. The reasonable value of the medical (hospital, nursing, and similar) care and supplies reasonably needed by and actually provided to the plaintiff and reasonably certain to be needed and provided in the future.

Remember, throughout your deliberations you must not engage in any speculation, guess, or conjecture, and you must not award any damages under this Instruction by way of punishment or through sympathy.

INSTRUCTION NO. 10

If you find in favor of Linn under Instruction No. 6, but you find that his damages have no monetary value, then you must return a verdict for Linn in the nominal amount of \$1.00.

INSTRUCTION NO. 11

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 Linn under Instruction No. 6 and if it has been proved that the conduct of Mason as submitted in Instruction No. 6 was malicious or with reckless or callous indifference to Linn's rights, then you may, but are not required to, award Linn an additional amount as punitive damages. These damages have two purposes: punishing Mason for engaging in this misconduct and deterring Mason and others from engaging in misconduct in the future. You should presume that Linn has been made whole for his injuries by the damages awarded under Instruction No. 7.

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

1. How reprehensible Mason's conduct was. In this regard, you may consider whether the harm suffered by Linn was physical, whether there was violence, deceit, intentional malice, or reckless disregard for human health or safety.

2. How much harm Mason's wrongful conduct caused Linn and could cause Linn in the future.

3. What amount of punitive damages, in addition to the other damages already awarded, is needed, considering Mason's financial condition, to punish Mason for his wrongful conduct toward Linn and to deter Mason and others from similar wrongful conduct in the future.

"Malicious" means intentionally injuring another without just cause or reason.

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

You may assess punitive damages against Mason or you may refuse to assess punitive damages.

INSTRUCTION NO. 12

Finally, the verdict form is simply the written notice of the decisions that you reach in this case.

VERDICT

1. On Kevin Linn's excessive force claim against Chad Mason, as submitted in Instruction No. 6, we find for:

_____ Kevin Linn _____ Chad Mason

If you found for Linn on question 1, then answer question 2. If you found for Mason on question 1, your deliberations are done. Do not answer questions 2 and 3.

2. We find Kevin Linn's damages to be \$_____ (stating the amount, or if you find that Linn's damages have no monetary value, put \$1.00)

If you found for Linn on question 1, and awarded Linn compensatory damages on question 2, then answer question 3.

3. We assess punitive damages against Chad Mason of \$_____ (stating the amount or, if none, write the word "none").

Foreperson

Date

You will take this verdict form to the Jury room, and when each of you has agreed on the answers, your foreperson will fill in the form for each question that you are called upon to answer to reflect your unanimous decision, sign and date it, and then advise the court security officer that you are ready to return to the Courtroom.

I add the caution that nothing said in the instructions – nothing in the form of the verdict forms prepared for your convenience – is or was intended to suggest or convey in any way or manner any intimation as to what answers I think you should find. How you choose to answer the verdict form shall be the sole and exclusive responsibility of you, the Jury.

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by the court security officer, signed by your foreperson, or by one or more members of the Jury. No member of the Jury should ever attempt to communicate with the Court by any means other than

a signed writing; and the Court will never communicate with any member of the Jury on any subject touching the merits of the case, other than in writing, or orally here in open Court.

You will note from the oath about to be taken by the court security officer to act as bailiff that he, and all other persons, are forbidden to communicate in any way or manner with any member of the Jury on any subject touching the merits of the case. Bear in mind also that you are never to reveal to any person, not even to the Court, how the Jury stands, numerically or otherwise, on the issues presented to you unless or until you reach a unanimous verdict.

Court security officer, do you solemnly swear to keep this Jury together in the jury room, and not to permit any person to speak to or communicate with them, concerning this case, nor to do so yourself unless by order of the Court or to ask whether they have agreed on a verdict, and to return them into the Courtroom when they have so agreed, or when otherwise ordered by the Court, so help you God?