

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Honorable Marcia S. Krieger**

**Civil Action No. 11-cv-00102-MSK-KLM**

**DANIEL MARTINEZ, JR.;  
NATHAN MARTINEZ;  
DANIEL MARTINEZ III; and  
JONATHAN MARTINEZ,**

**Plaintiff,**

**v.**

**JASON VALDEZ,  
ROBERT MARTINEZ,  
ROBERT MOTYKA, and  
BRYCE JACKSON,**

**Defendants.**

**CONCLUDING JURY INSTRUCTIONS  
(DRAFT)**

**INSTRUCTION NO. \_\_**

**MEMBERS OF THE JURY:**

Now that you have heard the evidence, it becomes my duty to instruct you as to the law applicable to this case. I have already given you some introductory instructions at the beginning of the case, and you have received oral instructions during the trial. You should consider all of the instructions I have already given you together with those I am about to give you.

It is your duty as jurors to follow the law as contained in these instructions and to apply that law to the facts as you find them from the evidence in the case. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole. You are not to be concerned with the wisdom of any rule of law – you must apply it whether you agree with it or not.

Counsel will properly refer to some of the governing rules of law in their closing arguments. If there is any difference between the law as stated by counsel and that stated in these instructions, you are governed by these instructions.

Nothing in these instructions is to be taken as an indication of my personal opinion about the facts of the case. It is not my function to determine the facts; it is yours.

You must perform your duties as jurors without bias or prejudice as to any party. The law does not permit you to be governed by sympathy, prejudice or public opinion. All parties expect that you will carefully and impartially consider all of the evidence, follow the law as it is now being given to you, and reach a just verdict.

This case should be considered and decided by you as an action between parties of equal standing in the community, of equal importance, and entitled to the same rights. All parties are entitled to the same fair trial.

**INSTRUCTION NO. \_\_**

You should consider only the evidence in this case, but you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of your experience. In other words, you should use your reason and common sense to make deductions and reach conclusions as to the facts.

The evidence from which you are to decide the facts consists of:

1. the sworn testimony of the witnesses;
2. the exhibits which have been received into evidence;
3. any facts to which the lawyers have agreed or stipulated; and
4. any other facts you have been instructed to treat as true.

Any finding of fact you make must be based on probabilities, not possibilities. Facts may not be based on surmise, speculation or conjecture.

**INSTRUCTION NO. \_\_**

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it. In evaluating the testimony of any witnesses, you may consider:

1. the opportunity and ability of the witness to see or hear or know the things testified to;
2. the witness' memory;
3. the witness' manner while testifying;
4. the witness' interest in the outcome of the case and his or her bias or prejudice;
5. whether other evidence contradicted the witness' testimony;
6. the reasonableness of the witness' testimony in light of all the evidence; and
7. any other factors that bear on believability.

**INSTRUCTION NO. \_\_**

If you find the testimony of a single witness is sufficiently convincing so as to establish the existence of a particular fact, you may find that fact to be proven even though a number of witnesses have testified to the contrary.

**INSTRUCTION NO. \_\_**

A witness' testimony may be discredited or impeached by contradictory evidence or by evidence that at some other time the witness said or did something inconsistent with the testimony or failed to say or do something which you consider to be inconsistent. If you believe any witness' testimony has been discredited for any of these reasons, you can give the testimony whatever weight it deserves in light of the circumstances.

If a witness has testified falsely concerning any material matter, you may distrust such witness' testimony in other particulars, reject it altogether, or give it such weight as you may think it deserves.

**INSTRUCTION NO. \_\_**

The Plaintiffs assert multiple claims in this case. You must determine each claim separately based on the evidence that relates to that claim. Your verdict with regard to one claim should not influence your verdict with regard to any other claim.

The Plaintiffs assert some of their claims against more than one Defendant. Where the Plaintiffs assert the same claim against more than one Defendant, you must consider that claim separately against each Defendant against whom it is asserted. Your verdict with regard to the claim against one Defendant should not influence your decision on that claim against any other Defendants.



**INSTRUCTION NO. \_\_**

**Claim 1: Unlawful Entry**

Each of the Plaintiffs assert a claim of unlawful entry against Defendant Valdez, Defendant Martinez, and Defendant Motyka. The claims allege that these Defendants unreasonably entered the Plaintiffs' residence without a warrant and without consent, in violation of Title 42, Section 1983 of the United States Code. That statute reads, in pertinent part:

Every person who, [acting as a state officer] . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured . . .

The Fourth Amendment of the United States Constitution establishes citizens' rights to be free from "unreasonable searches and seizures," including unlawful entry into their homes.

**INSTRUCTION NO. \_\_**

To prove a claim of unlawful entry against Defendant Valdez, Defendant Martinez, and Defendant Motyka, each the Plaintiffs must prove the following element against a Defendant by a preponderance of the evidence:

1. the Defendant's entry into the residence was made without consent.

If you find that one or more Defendants entered the residence without consent, you must turn to the Defendants' affirmative defense that their entry was permissible due to exigent circumstances. To prove this defense, the Defendant(s) whom you find entered without consent must prove the following element by a preponderance of the evidence:

1. the Defendant's entry into the residence was justified by exigent circumstances.

**INSTRUCTION NO. \_\_**

In determining whether a Defendant's entry into the residence was made without consent, you are instructed as follows.

Police officers may enter a residence without a warrant if an occupant of the residence consents to allow them inside. A person may consent to allow police officers to enter their home just as they might allow any other visitor to do so. You should consider all of the circumstances of the interaction between the police and Daniel Martinez Jr., including the time of day, the words spoken by the officers and Mr. Martinez, the general appearance and demeanor of the officers, and all of the other customary social practices that factor into whether an occupant of a residence decides to allow a visitor knocking on the door to come in.

It is not necessary that the person responding to the police specifically say "I consent" or use any other particular words. Indeed, non-verbal conduct, such as opening a door further and stepping aside or gesturing to police officers to come in can be an indication of consent.

A police officer who relies upon consent to enter a residence must stay within the scope of any limitations that the person granting consent expresses.

With regard to all questions having to do with consent, your focus must be on the events as they would appear to a reasonable police officer in the situation.

**INSTRUCTION NO. \_\_**

You have heard testimony about the Supreme Court case of *Georgia v. Randolph* and about the doctrine that one person in a house can revoke the consent that another person in the house has given to police to enter. I instruct you that I have determined that this principle is not applicable to this case, and you should disregard it. If you find that Daniel Martinez Jr. gave consent to the Defendants to enter the residence, the fact that others in the residence may have disagreed with that consent or asked the police to leave does not rescind that consent.

**INSTRUCTION NO. \_\_**

In determining whether exigent circumstances justified a Defendant's entry into the residence, you are instructed as follows.

Police officers are permitted to enter a residence without a warrant in various circumstances where the nature of the situation is such that the officers' need to enter is so immediate and compelling that it would be unreasonable to require them to go obtain a warrant before entering. These are called "exigent circumstances." Some examples of exigent circumstances include the need for police to enter to provide emergency assistance to an occupant, to prevent what appears to be an imminent attempt by an occupant to destroy evidence of a crime, or the need to protect fellow officers in the residence from harm.

In determining whether exigent circumstances existed to justify a Defendant's entry into the residence here, you should consider all of the facts and circumstances of the incident. You should examine these circumstances as they would appear to a reasonable police officer on the scene, mindful of the uncertainties that police routinely encounter, rather than with the benefit of hindsight. At the same time, you should consider whether any emergency or immediate need to enter the residence was the result of misconduct by one or more of the officers, as police are not permitted to create their own exigent circumstances in order to gain entry to a residence.

**INSTRUCTION NO. \_\_**

**Claim 2: Use of Excessive Force**

Plaintiffs Daniel Martinez III, Nathan Martinez, and Jonathan Martinez each assert a claim of excessive force against a different individual Defendant. Plaintiff Daniel Martinez III brings a claim against Defendant Jackson; Plaintiff Nathan Martinez brings a claim against Defendant Motyka; and Plaintiff Jonathan Martinez brings a claim against Defendant Valdez.

Those claims allege that the relevant Defendant used excessive force against the individual Plaintiff in violation of Title 42, Section 1983. I have previously advised you of the pertinent text of that statute. The Fourth Amendment of the United States Constitution establishes citizens' rights to be free from "unreasonable searches and seizures," including the use of excessive force to accomplish an arrest.

**INSTRUCTION NO. \_\_**

To prove a claim of excessive force against the relevant Defendant, each Plaintiff must prove each of the following two elements against the Defendant by a preponderance of the evidence:

1. that the amount of force used by the Defendant in the act of arresting the Plaintiff was excessive; and
2. that the Plaintiff suffered injuries (physical or emotional) as a result of the use of excessive force.

**INSTRUCTION NO. \_\_**

In determining whether each Plaintiff has proven that the relevant Defendant used an amount of force that was excessive, you should consider the following:

In making an arrest, a police officer has the right to use such force as is reasonable and necessary under the circumstances to make the arrest. The level of force used by a police officer on an individual during an arrest is excessive if it is greater than what a reasonable police officer would have used in arresting the individual under the circumstances.

When making your determination, you should consider the totality of the circumstances as they existed at the time the arrest was made. The reasonableness of a particular use of force must be judged objectively from the information available at the time from the perspective of a reasonable officer on the scene, rather than with use of hindsight.

Factors to consider in determining whether each Defendant used excessive force include: (1) the severity of the crime for which the arrest was being made; (2) whether the relevant Plaintiff posed an actual or perceived immediate threat to the safety of the arresting officers or others; (3) whether the Plaintiff was actively resisting arrest or attempting to escape; (4) the fact that police officers are often forced to make split-second judgments in tense, uncertain, and rapidly evolving circumstances; and (5) whether the need to use force was caused, in part or whole, by conduct that the police knew or were substantially certain was unlawful. You may consider these and any other factors you believe bear on the question of whether the force used by the Defendants was reasonable or not.

However, one factor that you may not consider is the intention of the officer in applying the force. A police officer who acts with the best of motives is nevertheless liable if he or she



uses an excessive amount of force in making an arrest; similarly, a police officer who acts in bad faith or with malice, but applies only a reasonable amount of force in making an arrest, is not liable to the person arrested.

**INSTRUCTION NO. \_\_**

**Claim 3: False Arrest**

Each of the Plaintiffs assert a claim of false arrest against a different individual Defendant. Plaintiff Daniel Martinez Jr. brings a claim against Defendant Martinez, Plaintiff Nathan Martinez brings a claim against Defendant Motyka, Plaintiff Daniel Martinez III brings a claim against Defendant Jackson, and Plaintiff Jonathan Martinez brings a claim against Defendant Valdez. Those claims allege that the relevant Defendant falsely arrested the individual Plaintiff that brings the claim, again in violation of Title 42, Section 1983 of the United States Code.

The Fourth Amendment of the United States Constitution’s prohibition on “unreasonable searches and seizures,” also establishes citizens’ rights to be free from false arrests.

**INSTRUCTION NO. \_\_**

To prove a claim of false arrest against the relevant Defendant, each Plaintiff must prove each of the following elements against the Defendant by a preponderance of the evidence:

1. he was arrested by the Defendant, and
2. the Defendant did not have probable cause to arrest him.

**INSTRUCTION NO. \_\_**

A police officer has “probable cause” to arrest if, based upon reasonably trustworthy information, a reasonable police officer could conclude that a person has committed or is about to commit a crime. That information may be obtained from sources that the police officer reasonably believes are truthful and accurate, or by the police officer’s own observation of the arrested person’s behavior.

In deciding whether there was probable cause, you may not consider anything that occurred after Plaintiffs’ arrest. The mere fact that charges were later brought against the Plaintiffs and later dismissed (or did not result in conviction) does not, in and of itself, establish a lack of probable cause.

**INSTRUCTION NO. \_\_**

Plaintiff Daniel Martinez Jr. was arrested for allegedly violating one provision of the Revised Municipal Code for the City and County of Denver.

Section 38-31 of the Revised Municipal Code states, in pertinent part:

It shall be unlawful for any person, in any way, to interfere with or hinder any police officer . . . while such officer . . . is discharging or apparently discharging their duties.

Plaintiffs Daniel Martinez III, Nathan Martinez, and Jonathan Martinez were arrested for allegedly violating one portion of the Colorado Revised Statutes.

Section 18-3-203 of the Colorado Revised Statutes states, in pertinent part:

A person commits the crime of assault in the second degree if . . . [w]ith intent to prevent one whom he or she knows, or should know, to be a peace officer . . . from performing a lawful duty, he or she intentionally causes bodily injury to any person . . . .

**INSTRUCTION NO. \_\_**

**Claim 4: Malicious Prosecution**

Each Plaintiff brings a claim of Malicious Prosecution against all Defendants.

To prove a claim of malicious prosecution against each Defendant, each Plaintiff must prove each of the following elements by a preponderance of the evidence:

1. the criminal charges brought against them were brought as a result of oral or written statements made by the Defendant,
2. the Defendant's statements against the Plaintiff were made without probable cause,
3. the Defendant's statements against the Plaintiff were motivated by malice towards the Plaintiff, and
4. as a result of the criminal case, the Plaintiff suffered injuries.

**INSTRUCTION NO. \_\_**

In determining whether an officer's statement was made "without probable cause," you are instructed that this element is satisfied if the Plaintiff shows that either the Defendant officer made statements that the Defendant officer knew was false or that the Defendant officer made the statement in reliance on information provided by some other person that the Defendant officer reasonably should have known was inaccurate.

**INSTRUCTION NO. \_\_**

In determining whether a Plaintiff has proven that a Defendant was motivated by malice towards a Plaintiff, you should consider the following:

Malice is any motive other than a desire to bring an offender to justice. If you find that a Defendant officer made statements regarding a particular Plaintiff without probable cause, you may, but are not required to, infer that the officer acted with malice. However, you must consider all the circumstances surrounding the filing and prosecution of the criminal case.



**INSTRUCTION NO. \_\_**

**Claim 4a: Continued Malicious Prosecution by Plaintiff Jonathan Martinez**

In addition to the malicious prosecution claims I have previously described – that is, claims that the police officers maliciously prosecuted the Plaintiffs by making false statements in order to cause criminal charges to be filed against them – Plaintiff Jonathan Martinez alleges a separate and additional claim of malicious prosecution, alleging that after criminal charges had been filed against him, the Defendants continued to seek his prosecution by repeating those allegedly false statements, causing the criminal proceedings against him to proceed.

To prove a claim this claim of continued malicious prosecution against each Defendant, Jonathan Martinez must prove each of the following elements by a preponderance of the evidence:

1. the Defendant made oral or written statements that caused the criminal prosecution of Jonathan Martinez to continue beyond the mere filing of charges;
2. those statements were made by the Defendant without probable cause,
3. the Defendant's statements against Jonathan Martinez were motivated by malice towards him and
4. as a result of the criminal case, Jonathan Martinez suffered injuries.

With regard to these elements, you should consider the instructions that I have previously given you.

**INSTRUCTION NO. \_\_**

In considering whether the criminal charges brought against Plaintiff Jonathan Martinez were thereafter continued as a result of oral or written statements made by the Defendants made without probable cause, you are advised that criminal charges were brought against Plaintiff Jonathan Martinez for allegedly violating Section 18-3-204 of the Colorado Revised Statutes states. That provision reads, in pertinent part:

A person commits the crime of assault in the third degree if . . . [t]he person knowingly or recklessly causes bodily injury to another person . . . .

**INSTRUCTION NO. \_\_**

**Damages**

If you find that any of the Plaintiffs have proven any of their claims, then you must consider the question of what, if any, damages to award. Damages are the amount of money which will reasonably and fairly compensate a plaintiff for the injuries or losses that he suffered as a result of unlawful conduct. Each Plaintiff has the burden of proving his injuries by a preponderance of the evidence. However, the law does not require that a party prove the amount of an injury with mathematical precision, but only with as much definiteness and accuracy as circumstances permit. With regard to future damages, the Plaintiff must provide proof that the damages will accrue in the future and evidence that provides a reasonable basis for computation of the damage.

In determining whether to award damages, and if so, in what amount, you should be guided by dispassionate common sense. You must use sound discretion and may draw reasonable inferences from the facts in evidence. You must not engage in speculation, conjecture, or guess work. You may not award damages based upon sympathy.

Plaintiffs have asserted multiple claims that, in part, involve suffering allegedly the same injuries. If you found in favor of a single Plaintiff on multiple claims arising out of the same injuries, you may only award damages once for those injuries.

You should not interpret this instruction as any indication that the Plaintiffs should, or should not, be awarded damages.

**INSTRUCTION NO. \_\_**

Damages are the amount of money which will reasonably and fairly compensate a party for the loss he or she has suffered.

In determining the amount of damages to award, you may consider the following two categories:

1. Any reasonable expenses the Plaintiff may have incurred as a result of a violation of his civil rights; and
2. Any pain and suffering, inconvenience, emotional stress, humiliation, mental anguish and suffering, anxiety, loss of enjoyment of life, or impairment of the quality of life caused by a violation of his civil rights.

You may award damages for all injuries suffered by a Plaintiff that were caused by a Defendant's unlawful conduct, even if the Plaintiff's physical or emotional condition rendered him unusually susceptible to being injured.

**INSRTRUCTION NO. \_\_**

If you return a verdict for a Plaintiff, but find that a Plaintiff has failed to prove by a preponderance of the evidence that he suffered any actual damages, then you must return an award of damages in some nominal or token amount not to exceed the sum of one dollar.

Nominal damages must be awarded when a Plaintiff has been deprived by the Defendant Officer(s) of a constitutional right but has suffered no actual damage as a natural consequence of that deprivation. The mere fact that a constitutional deprivation occurred is an injury to the person entitled to enjoy that right, even when no actual damages flow from the deprivation.

**INSTRUCTION NO. \_\_**

If you find that a Plaintiff has suffered injuries for which damages should be awarded, you must consider the Defendants' affirmative defense of failure to mitigate.

Once a person has suffered injuries or losses as the result of a legal wrong, that person has an obligation to take reasonable steps thereafter to minimize or mitigate those injuries or losses. The person is not entitled to recover damages for any injuries or losses that the person could have reasonably avoided.

To prove their defense that a Plaintiff failed to mitigate his damages, the Defendants have the burden of proving both of the following two elements by a preponderance of the evidence:

1. After the January 27, 2009 incident, the Plaintiff had opportunities to take reasonable actions that, if done, would have reduced or eliminated injuries or losses that he suffered as a result of the incident; and
2. The Plaintiff did not take those actions.

If you find that the Defendants have proven their defense that a Plaintiff failed to mitigate his damages, you must reduce your award of damages to that Plaintiff by any amount that you determine that he could have reasonably avoided.

**INSTRUCTION NO. \_\_**

If you find that any Plaintiff is entitled to an award of damages on one or more of his claims, you may, but are not required to, award punitive damages. The purposes of punitive damages are both to punish a defendant for the conduct in question and to deter that defendant or others from committing similar acts in the future.

You may award punitive damages to a Plaintiff only if you find that he has proven, by a preponderance of the evidence, that the conduct of those Defendants against whom you have found a verdict was in reckless disregard of the Plaintiff's rights. A defendant's conduct would be in reckless disregard of a Plaintiff's rights if, under the circumstances, it reflected a complete indifference to the Plaintiff's safety or rights, or if the defendant perceived a risk that his actions would violate the Plaintiff's rights under federal law, but nevertheless chose to proceed to take those actions.

If you find that punitive damages are appropriate, you must then turn to the question of how much to award. A Plaintiff has the burden of proving the appropriate amount of punitive damages by a preponderance of the evidence. Punitive damages, if any, should be in an amount to fulfill their purposes but you must use reason in setting the amount. Your determination of the amount of punitive damages should not reflect bias, prejudice, or sympathy toward any party. In considering punitive damages, you may consider the degree of reprehensibility of the conduct and the relationship of any award of punitive damages to any actual harm inflicted on the Plaintiff.

**INSTRUCTION NO. \_\_**

Upon retiring to the jury room, you will select one of your number to act as your foreperson. The foreperson will preside over your deliberations and will be your spokesperson in the courtroom.



**INSTRUCTION NO. \_\_**

In order to return a verdict, it is necessary that all jurors agree; your verdict must be unanimous. It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. You must each evaluate the case for yourself, but only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion if you are convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict. Remember at all times that you are not partisans. You are judges – judges of the facts. Your role is to seek and determine the truth based on the evidence presented to you.

**INSTRUCTION NO. \_\_**

A verdict form has been prepared for your convenience.

You will take this verdict form to the jury room. You will note that the form includes a number of questions which call for a “yes” or “no” answer. The answer to each question must be the unanimous answer of the jury. Your foreperson will write the unanimous answer of the jury in the space provided for each response. As you will note from the wording of the questions, it may not be necessary to consider or answer every question.

When you have completed the verdict form, all jurors will sign and date the form, which should be brought to the courtroom when you return.

**INSTRUCTION NO. \_\_**

I will not invite communications from you, but if it becomes necessary during your deliberations to communicate with me, the foreperson may sign and give a note to the court security officer. No member of the jury should attempt to communicate with me or any other court official by any means other than a signed writing. Neither I nor any other court official will communicate with any member of the jury regarding this case other than in writing, or orally in open court. Upon receipt of a note from you, I will convene a meeting with the attorneys to discuss your question or request, which may take considerable time and effort to respond.

You will note from the oath taken by the court security officer that they too, as well as 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. Let me know immediately if anyone attempts any such communication.

Bear in mind also that you are never to reveal to any person – not even me – how the jury stands, numerically or otherwise, on the questions before you, until after you have reached a unanimous verdict.

**INSTRUCTION NO. \_\_**

The jury is always released from the courtroom, ordinarily at 5:00 p.m. If you desire to conclude a day's deliberations at an earlier time, please advise by a note signed by the foreperson. Upon receiving such a note, we will reconvene in the courtroom as soon as possible. The foreperson shall then state the time you intend to resume deliberations on the next business day. On that day, the foreperson shall advise by note confirming that all jurors are present and deliberations have begun.

You are not to discuss this case with anyone else except during your deliberations in the jury room. You shall not deliberate unless all jurors are present.