UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

KIRK SHELTON,
Plaintiff,

v.

YURI WOZNY, ALIAS IMONDI, NATHAN GALLISON, MARIO COMELLA, MICHAEL NEWMAN, CRAIG ALLISON, GARY CORREIRA, MICHAEL TOUSIGNANT, and the CITY OF PAWTUCKET,
Defendants.

C.A. No. 14-313-JJM-LDA

JURY INSTRUCTIONS

I. GENERAL INSTRUCTIONS

Now that you have heard all of the evidence and the arguments of counsel, it is my job to instruct you on the law that is applicable to this case.

I will send a written copy of my instructions into the jury room.

A. PROVINCE OF THE COURT AND JURY

It is your duty as jurors to follow the law as I shall state it to you and to apply that law to the facts of the case, as you determine those facts to be from the evidence in this case. You are not to be concerned with the wisdom of any rule of law stated by me. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

Further, nothing I say in these instructions and nothing that I have said or done during the trial is to be taken as an indication that I have any opinion about

the facts of the case. I do not. It is not my role to determine the facts; that is your role.

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

This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations of life. All parties are entitled to the same fair trial at your hands. All parties stand equal before the law, and are to be dealt with as equals in a court of justice.

B. EVIDENCE IN THE CASE

In determining the facts of this case, you are to consider only the evidence that has been properly put before you. That evidence consists of the sworn testimony of witnesses and the exhibits that have been received into evidence. Evidence that the court admits in full is properly before you for your consideration; evidence that this Court has refused to admit is not a proper subject for your deliberations and you should not consider it when reaching a verdict. Admitted evidence will be available to you in the jury room for your consideration during your deliberations.

The fact that the Court admitted evidence over objection should not influence you in determining the weight you should give such evidence. Nor should

statements made by counsel, either for or against the admission of such evidence, influence your determination of the weight you will give the evidence, if the evidence was admitted.

Certain things are not evidence, and you may not consider them in deciding what the facts are.

1. Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements and closing arguments, and at other times, may help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory controls.

2. Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the Court's ruling on it.

3. Testimony that has been excluded is not evidence and must not be considered.

4. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at trial.

C. CREDIBILITY OF WITNESSES

You are the sole judges of the credibility of the witnesses and the weight their testimony deserves. In deciding the facts of this case, you may have to decide which

testimony to believe and which testimony not to believe. In considering the testimony of any witness, you may take into account:

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

After making your own judgment, you may believe everything a witness says, or part of it, or none of it at all. Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying to the existence or non-existence of any fact. You may find that the testimony of a small number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

The testimony of a law enforcement officer should be considered by you just as any other evidence in this case, and in evaluating the officer's credibility you should use the same guidelines that you apply to the testimony of any witness.

D. EVIDENCE – DIRECT AND CIRCUMSTANTIAL

There are two types of evidence from which you may properly find the facts of this case. One is direct evidence – such as the testimony of an eyewitness. The

other is indirect or circumstantial evidence – that is, the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

As a general rule, the law makes no distinction between direct and circumstantial evidence. You are simply required to find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

In your consideration of the evidence in this case, you are allowed to make reasonable inferences from witnesses' testimony and the admitted exhibits. Inferences are deductions that reason and common sense lead you to draw from facts that have been established by the evidence in this case. Inferences, however, may not be based on pure speculation or conjecture.

E. OPINION EVIDENCE – EXPERT WITNESS

While the rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions, an exception exists for expert witnesses. These are witnesses who, by education and experience, have become experts in some art, science, profession, or calling. Expert witnesses may state their opinions, and the reasons for their opinions, on the subjects of their expertise, about matters that are relevant and material to the case before you.

If testimony from an expert witness is to have any evidentiary value, it must speak in terms of "probabilities" rather than mere "possibilities." Although absolute certainty is not required, the conclusions of an expert must be reached to a reasonable degree of certainty — that is, to a probability. In order for an expert's

opinion to be considered by you, it must have substantial probative value and not be based on speculation, conjecture, or surmise.

You should give an expert opinion such weight as you think it deserves. If you conclude that the reasons given in support of the expert's opinion are not sound, or if you feel that the expert's opinion is outweighed by other evidence, you may disregard the opinion entirely.

F. BURDEN OF PROOF: PREPONDERANCE OF THE EVIDENCE

The burden is on the Plaintiff in a civil action, such as this, to prove every essential element of his claims by a preponderance of the evidence. If the proof should fail to establish any essential element of the Plaintiff's claim by a preponderance of the evidence, then you should find for the Defendants on that claim. The Defendants do not have any obligation to disprove that which the Plaintiff asserts or claims.

To establish by "a preponderance of the evidence" means to prove that something is more probably true than not true. In other words, if you were looking at opposite ends of a scale, the Plaintiff's evidence would have to make one end of the scale tip to its side.

When I say in these instructions that a party has the burden of proof on any proposition, or use the expression "if you find," I mean you must be persuaded, considering all the evidence in the case, that the proposition is more probably true than not true. This rule does not, of course, require proof to an absolute certainty or even a near certainty.

II. CASE-SPECIFIC INSTRUCTIONS

In this case, Mr. Shelton makes five claims: (1) excessive force, (2) assault, (3) battery, (4) intentional infliction of emotional distress, and (5) failure to train or discipline by the City of Pawtucket.

A. EXCESSIVE FORCE

Mr. Shelton's first claim is that Defendants Wozny, Newman, Allison, Imondi, Gallison, Correira, Comella, and Tousignant—whom I shall refer to collectively as the "Officers"—violated his right to be free from excessive force.

Under the Fourth Amendment, every person has the constitutional right to be free from excessive force by law enforcement officers. In making a seizure, an officer has the right to use such force as a reasonable officer would believe is necessary under the circumstances to effectuate what a reasonable officer would believe appropriate in the circumstances. But, an officer may not use unnecessary, unreasonable, or excessive force. Whether the force used was unnecessary, unreasonable, or excessively violent is an issue for you to decide based on that degree of force that a reasonable and prudent law enforcement officer would have applied under the same circumstances disclosed in this case.

The test of reasonableness requires careful attention to relevant facts and circumstances, including but not limited to: the severity of the crime the officers were investigating, whether Mr. Shelton posed an immediate threat to the safety of the officers or others, and whether Mr. Shelton was actively resisting arrest or attempting to avoid arrest by fleeing.

The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene. With respect to a claim of excessive force, the standard of reasonableness at that moment applies. Not every push or shove violates the Constitution. The determination of reasonableness must allow for the fact that police officers are at times forced to make split-second judgments about the amount of force that is necessary in a particular situation.

Additionally, the use of force by police officers is not reasonable if there is no need for force. It is unreasonable for a police officer to use physical force on a person who has been arrested and restrained, who is securely under the control of the police, and who is not attempting to escape.

The "reasonableness" inquiry is an objective one. The question is whether an officer's actions are "objectively reasonable" in light of all the facts and circumstances confronting him, without regard to his underlying intent or motivation. Evil intentions will not make a constitutional violation out of an objectively reasonable use of force; and good intentions will not make an unreasonable use of force proper.

In order to prove his claim of unconstitutionally excessive force, Mr. Shelton must prove by a preponderance of the evidence that one or more of the Officers intentionally, rather than negligently, used unconstitutionally excessive force as I have defined it. However, it is not necessary to find that the Officers had any specific purpose or desire to deprive him of his constitutional rights in order to find in his favor. Mr. Shelton must prove only that the *action* was deliberate, not that

the *consequence* was intended. Mere negligence, however, is not sufficient. Mr. Shelton is entitled to relief if the Officers intentionally acted in a manner that resulted in a violation of his constitutional rights.

In addition, to recover compensatory damages, Mr. Shelton must prove that the Officers' violation of his constitutional rights proximately caused him harm. If you find that the Officers violated Mr. Shelton's right to be free from excessive harm, the next question is whether that caused Mr. Shelton to suffer an injury or injuries. You must determine whether that violation was the "proximate cause," meaning the direct cause, of the injury.

An injury or damage is proximately caused by an act whenever it appears from the evidence that the act played a substantial part in bringing about or actually causing the injury or damage, and that the injury or damage was either a direct result of or a reasonably probable consequence of the act.

1. Bystander Liability

Additionally, you may find an Officer liable even though he did not personally use force against Mr. Shelton. A bystander Officer can be held liable if you find (1) that he had a reason to know that excessive force, as I have defined it for you, was being used by another officer or officers for the purpose of punishment; (2) that he had a realistic opportunity to intervene to prevent the harm from occurring; and (3) that his failure to intervene was intentional.

B. ASSAULT & BATTERY

Mr. Shelton next claims that the Officers committed an assault against him. An assault is a physical act of a threatening nature or an offer of bodily injury that

puts an individual in reasonable fear of imminent bodily harm. It is the plaintiff's apprehension of injury that renders a defendant's act compensable. Words alone are never sufficient to establish an assault. However, if words are accompanied by a physical act that increases the plaintiff's fear of imminent bodily injury, that is sufficient to establish assault.

Mr. Shelton also claims that the Officers committed a battery against him. A battery refers to an act that was intended to cause and in fact did cause an offensive contact with or unconsented touching of or trauma upon the body of another resulting in the consummation of an assault. An intent to injure a plaintiff, however, is unnecessary in a situation in which a defendant willfully set in motion a force that in the ordinary course causes an injury. In order to recover for a battery, a plaintiff must show that there was an offensive contact with or unconsented touching of the body of another. In order to constitute a battery, a person must intend to cause the offensive contact or unconsented touching of another person. Thus, if a person accidentally and/or inadvertently touches another individual, that would not constitute a battery.

Police officers, however, are entitled to a privilege that allows them to use as much force as is reasonably necessary to effectuate an arrest without being held liable for assault and battery. If you find that the Officers used more force than was reasonably necessary to effectuate a legal arrest of Mr. Shelton, then you must return a verdict in favor of Mr. Shelton. If, however, you find that the Officers had

an objectively reasonable belief that the use of force was reasonable, then you must return a verdict in favor of the Officers.

C. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Mr. Shelton also claims that the Officers intentionally inflicted emotional distress upon him. To prevail on a claim for intentional infliction of emotional distress, Mr. Shelton must prove four elements: first, that the Officers' conduct was intentional or in reckless disregard of the probability of causing Mr. Shelton emotional distress; second, that the conduct was extreme and outrageous; third, that there was a causal connection between the wrongful conduct and the emotional distress; and fourth, that the emotional distress in question was severe.

In addition, Mr. Shelton must also provide evidence of the physical manifestation of his alleged emotional distress. Proof of such physical manifestations must be supported by competent expert medical opinion regarding origin, existence, and causation.

D. CONSIDER EACH DEFENDANT SEPARATELY

It is your duty to give separate and personal consideration to each Defendant. When you do so, you should analyze what the evidence in the case shows with respect to that particular Defendant, leaving out of consideration entirely any evidence admitted solely against the other Defendants. The fact that you return a verdict for or against a Defendant on any claim should not, in any way, affect your verdict regarding the other Defendants.

E. CUSTOM OF FAILURE TO TRAIN OR DISCIPLINE CLAIM

Mr. Shelton also claims that the City of Pawtucket violated his constitutional rights by failing to train or discipline its officers. To prevail on this claim, Mr. Shelton must show that the City of Pawtucket was deliberately indifferent to the constitutional rights of its inhabitants by adopting a policy or custom, and that the policy or custom caused him injury. A city is liable for those acts that are taken pursuant to, or caused by, its policies or customs. If there is a persistent and widespread practice which has gained the force of custom, and this practice was known to, or should have been known to, the Chief of Police, and which was tolerated by the Chief of Police, the City of Pawtucket will be liable for acts taken pursuant to that practice.

A municipality is deliberately indifferent when it disregards a known or obvious risk of serious harm from its failure to develop a training program that meets adequate standards. It is not enough that a program of discipline and training was inadequate; it must also be that the inadequate discipline and training was a deliberate, conscious choice by the City such that it can be considered the City's "custom."

In order to amount to "deliberate indifference," the need for training must be so obvious and the inadequacy so likely to result in the violation of constitutional rights that the policymakers of the City can reasonably be said to have been deliberately indifferent to the need.

If you find that an individual officer violated Mr. Shelton's constitutional rights, that alone is not enough to render the City of Pawtucket liable. It is also not enough that a particular officer may be unsatisfactorily trained.

If you find that the City was deliberately indifferent in adopting a policy or custom that violated Mr. Shelton's constitutional rights, you must also determine if this caused Mr. Shelton any injury. To establish this, Mr. Shelton must prove that the City's custom was closely related to and the moving force behind the constitutional violation.

F. DAMAGES – COMPENSATORY – PAIN & SUFFERING

If you find a Defendant liable, you may award the Plaintiff damages for any bodily injuries and for any physical or emotional pain and suffering he experienced as a result of that Defendant's wrongful conduct. By discussing damages with you, I am not implying that any of the Defendants acted wrongly, or that the Plaintiff is entitled to damages. That is a determination that you must make in the course of your deliberations.

Any amount you award for bodily injuries or pain and suffering should be based upon your consideration of the nature, extent and duration of such injuries and such pain and suffering. In addition, you may compensate the Plaintiff for mental suffering, which may include nervousness, anxiety, worry, shock, humiliation, embarrassment or indignity. It is difficult to measure bodily injuries and pain and suffering in terms of money. Nevertheless, you may not speculate or guess as to what constitutes fair compensation for bodily injuries or for pain and suffering.

Any award must be based on the evidence and what in your considered judgment constitutes fair and adequate compensation for such injuries and pain and suffering as have been proved. The determination of that amount, if any, is solely for you, the jury, to make. Suggestions of the attorneys as to how that amount might be computed are not binding upon you. You may, however, consider them if you find them helpful.

G. DAMAGES – MEDICAL EXPENSES

If you find a Defendant liable, the Plaintiff is entitled to recover reasonable and necessary medical expenses incurred. In assessing these damages, you may consider evidence that establishes that his medical treatment was necessary as a result of the Defendants' acts, and you may consider evidence that establishes the reasonable charge for any medical and/or hospital services.

H. DAMAGES – PUNITIVE

In addition to compensatory damages and medical expenses, the Plaintiff seeks to recover punitive damages from the Defendants in this case. The purpose of punitive damages is not to compensate a plaintiff, but rather is to punish a wrongdoer for outrageous or extraordinary misconduct, and to deter them or others from engaging in similar conduct in the future. You may decide to award punitive damages if you find that a Defendant's conduct was shown to be motivated by evil motive or intent, or that it involves reckless or callous indifference to the civil rights of others. You may not award punitive damages against a Defendant unless you find, by a preponderance of the evidence, that a Defendant's actions were

maliciously, willfully, wantonly or recklessly done and are found to be so willful, reckless, or wicked that they amount to criminality.

An act, or a failure to act, is done with "malice" if prompted or accompanied by ill will, spite, or grudge toward a plaintiff. You may consider all the evidence in the case in making this determination.

An act is done "willfully" if it is done voluntarily and intentionally, with the specific intent to do something the law forbids; that is to say, with a purpose either to disobey or to disregard the law.

Any act or omission is "wantonly" done if done in callous or reckless disregard of, or indifference to the rights of one or more persons, including the injured person.

"Recklessly" means with indifference to consequences. If a person acts without regard to possible consequences, he may be found to have acted recklessly.

Intent ordinarily may not be proved directly because there is no way to directly examine the thoughts of another human being. You may, however, infer a person's intent from surrounding circumstances. You may consider any statement made or act done or omitted by a person whose intent is in issue, and all other facts and circumstances which indicate his state of mind.

You may award the Plaintiff punitive damages whether or not you find that he suffered actual or compensatory damages. That is, you need not find that the Plaintiff incurred an economic or tangible loss in order to award punitive damages. In addition, an award of nominal damages or actual damages will not prevent you from awarding punitive damages.

You may not impose punitive damages against the Municipal Defendants; that is, the City of Pawtucket or any of the Officers in their official capacities. You may impose punitive damages against one or more of the individual Defendants and not others, and you may award different amounts against different Defendants.

You are not required to award punitive damages. Whether any one of the individual Defendants should be required to pay punitive damages is a matter for you to determine.

III. FINAL PROCEDURAL INSTRUCTIONS

Ladies and gentlemen, in a moment I will dismiss you so that you may commence your deliberations. However, before I do that, I need to give you some instructions about the procedures you must use in the course of your deliberations.

As I said at the beginning of my instructions, you must not allow prejudice, sympathy, or compassion to influence you in the course of your deliberations. That does not mean that you should approach this case in an intellectual vacuum. You are not required to put aside your experiences and observations in the ordinary, everyday affairs of life. Indeed, your experiences and observations in the ordinary, everyday affairs of life are essential to your exercise of reasonably sound judgment and discretion in the course of your deliberations; and it is your right and duty to consider the evidence in light of such experience and observations. But you must not allow prejudice, sympathy, or compassion to cloud your examination of the evidence or influence your determination of the facts.

During your deliberations, you must not communicate with or provide any information to anyone outside of the jury room by any means about this case. You

may not use any electronic device or media, such as a cell phone, a tablet, or a computer. You may not communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict. You can only discuss the case in the jury room with your fellow jurors during deliberations.

Now, in order for you to return a final verdict, your decision must be unanimous. That means that you cannot return a verdict unless and until all six of you are in agreement as to the verdict.

Therefore, in the course of your deliberations and in your consideration of the evidence, you should exercise reasonable and intelligent judgment. It is not required that you yield your convictions simply because a majority holds to the contrary view, but in pursuing your deliberations you should keep your minds reasonably open with respect to the point in dispute so that you will not be precluded or prevented from achieving a unanimous verdict by mere stubbornness. It is your right to maintain your convictions. Each vote of each juror is as important as the vote of any other juror, and you need not give up your sincerely held convictions simply because a majority holds to the contrary.

I am designating juror # 1, Denise O'Leary, as the Foreperson of this jury. Ms. O'Leary, it will be your responsibility to organize the group and facilitate organized and healthy deliberations. The Foreperson's opinion, voice, or vote, however, is no more meaningful than any other juror.

When you are in the jury room, you will be provided with the evidence that has been admitted in this case. It may take us a few minutes to gather it up, but as soon as we do, it will be brought to the jury room.

You will also be given a verdict form. When you have reached a verdict, the Foreperson will fill out that form and sign it. Once the verdict form is complete, you will inform the Court Security Officer.

[REVIEW OF VERDICT FORM]

If, in the course of your deliberations, you deem it necessary to be further instructed or assisted by the Court in any way, the Foreperson should reduce such request or question to writing, sign it, and give it to the Court Security Officer in whose charge you will now be placed. The Court Security Officer will then bring such written request to me and I, in consultation with the attorneys, will determine an appropriate response. Other than this method, please do not attempt to communicate privately or in any other way with the Court or with anyone outside the jury room.