UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NELDA KELLOM, as personal representative of the estate of TERRANCE KELLOM, deceased,

Plaintiff,

v.

MITCHELL QUINN, Immigration and Customs Enforcement Agent,

Defendant.
_______________________________________/

Civil No. 17-cv-11084

Hon. Sean F. Cox
Mag. Anthony P. Patti

AMENDED JURY INSTRUCTIONS

Plaintiff Nelda Kellom (as representative of the estate of Terrance Kellom, deceased) and defendant Mitchell Quinn submit the following amended proposed Jury Instructions.

The Sixth Circuit does not provide pattern jury instructions for civil cases. The parties propose adopting select instructions from the Seventh Circuit's civil jury instructions. The parties have agreed on the majority of the instructions, save for the inclusion of 7.26(e) as proposed by plaintiff.

Respectfully submitted,

AYAD LAW PLLC

/s/Nabih H. Ayad (with consent)
Nabih h. Ayad (P59518)
Attorney for Plaintiff
645 Griswold Street, Suite 2202
Detroit, Michigan 48226
Phone: (313) 983.4600
Email: nayad@hotmail.com

MATTHEW SCHNEIDER
United States Attorney

/s/Brandon C. Helms
Brandon C. Helms (IL 6294316)
Zak Toomey (MO 61618)
Assistant United States Attorneys
211 W. Fort Street, Suite 2001
Detroit, Michigan 48226
Phone: (313) 226.9639
Phone: (313) 226.9617
Email: brandon.helms@usdoj.gov
Email: zak.toomey@usdoj.gov

Dated: November 1, 2019

TABLE OF CONTENTS

1.01 FUNCTIONS OF THE COURT AND THE JURY 1
1.02 NO INFERENCE FROM JUDGE'S QUESTIONS 2
1.04 EVIDENCE 3
1.05 DEPOSITION TESTIMONY 4
1.06 WHAT IS NOT EVIDENCE 5
1.07 NOTE-TAKING 6
1.08 CONSIDERATION OF ALL EVIDENCE REGARDLESS OF WHO PRODUCED 7
1.09 LIMITED PURPOSE OF EVIDENCE 8
1.11 WEIGHING THE EVIDENCE 9
1.12 DEFINITION OF "DIRECT" AND "CIRCUMSTANTIAL" EVIDENCE .. 10
1.13 TESTIMONY OF WITNESSES (DECIDING WHAT TO BELIEVE) 11
1.14 PRIOR INCONSISTENT STATEMENTS 12
1.16 LAWYER INTERVIEWING WITNESS 13
1.17 NUMBER OF WITNESSES 14
1.18 ABSENCE OF EVIDENCE 15
1.21 EXPERT WITNESSES 16
1.27 BURDEN OF PROOF 17
1.31 NO NEED TO CONSIDER DAMAGES INSTRUCTION 18
1.32 SELECTION OF PRESIDING JUROR; GENERAL VERDICT 19
1.34 DISAGREEMENT AMONG JURORS 20
2.05. STIPULATIONS OF FACT 21
2.14. JUDGE'S COMMENTS TO LAWYER 23
7.01 GENERAL: POLICE DEPARTMENT/MUNICIPALITY NOT A PARTY. 24
7.09 FOURTH AMENDMENT: EXCESSIVE FORCE AGAINST ARRESTEE OR DETAINEE- ELEMENTS 25
7.10 FOURTH AMENDMENT: EXCESSIVE FORCE AGAINST ARRESTEE DEFINITION OF "UNREASONABLE" 26
7.26 DAMAGES: COMPENSATORY 28

7.28 DAMAGES: PUNITIVE 30

1.01 FUNCTIONS OF THE COURT AND THE JURY

Members of the jury, you have seen and heard all the evidence and arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice, or public opinion to influence you.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

1.02 NO INFERENCE FROM JUDGE'S QUESTIONS

During this trial, I have asked a witness a question myself. Do not assume that because I asked questions I hold any opinion on the matters I asked about, or on what the outcome of the case should be.

1.04 EVIDENCE

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, and stipulations.

A stipulation is an agreement between both sides that certain facts are true.

1.05 DEPOSITION TESTIMONY

During the trial, certain testimony was presented to you by the reading of a deposition or video. You should give this testimony the same consideration you would give it had the witness appeared and testified here in court.

1.06 WHAT IS NOT EVIDENCE

Certain things are not to be considered as evidence. I will list them for you:

First, if I told you to disregard any testimony or exhibits or struck any testimony or exhibits from the record, such testimony or exhibits are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, Internet or television reports you may have seen or heard. Such reports are not evidence and your verdict must not be influenced in any way by such publicity.

Third, questions and objections or comments by the lawyers are not evidence. Lawyers have a duty to object when they believe a question is improper. You should not be influenced by any objection, and you should not infer from my rulings that I have any view as to how you should decide the case.

Fourth, the lawyers' opening statements and closing arguments to you are not evidence. Their purpose is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

1.07 NOTE-TAKING

Any notes you have taken during this trial are only aids to your memory. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about the testimony.

1.08 CONSIDERATION OF ALL EVIDENCE REGARDLESS OF WHO PRODUCED

In determining whether any fact has been proved, you should consider all of the evidence bearing on the question regardless of who introduced it.

1.09 LIMITED PURPOSE OF EVIDENCE

You will recall that during the course of this trial I instructed you that I admitted certain evidence for a limited purpose. You must consider this evidence only for the limited purpose for which it was admitted.

1.11 WEIGHING THE EVIDENCE

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this "inference." A jury is allowed to make reasonable inferences. Any inference you make must be reasonable and must be based on the evidence in the case.

1.12 DEFINITION OF "DIRECT" AND "CIRCUMSTANTIAL" EVIDENCE

You may have heard the phrases "direct evidence" and "circumstantial evidence." Direct evidence is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact. Circumstantial evidence is proof of a fact, or a series of facts, that tends to show that some other fact is true.

As an example, direct evidence that it is raining is testimony from a witness who says, "I was outside a minute ago and I saw it raining." Circumstantial evidence that it is raining is the observation of someone entering a room carrying a wet umbrella.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should decide how much weight to give to any evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

1.13 TESTIMONY OF WITNESSES (DECIDING WHAT TO BELIEVE)

You must decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also must decide what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, including any party to the case, you may consider, among other things:

- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- any interest, bias, or prejudice the witness may have;
- the witness's intelligence;
- the manner of the witness while testifying;
- and the reasonableness of the witness's testimony in light of all the evidence in the case.

1.14 PRIOR INCONSISTENT STATEMENTS

You may consider statements given by a party or witness under oath before trial as evidence of the truth of what he said in the earlier statements, as well as in deciding what weight to give his testimony.

With respect to other witnesses, the law is different. If you decide that, before the trial, one of these witnesses made a statement not under oath that is inconsistent with his testimony here in court, you may consider the earlier statement only in deciding whether his testimony here in court was true and what weight to give to his testimony here in court.

In considering a prior inconsistent statement, you should consider whether it was simply an innocent error or an intentional falsehood and whether it concerns an important fact or an unimportant detail.

1.16 LAWYER INTERVIEWING WITNESS

It is proper for a lawyer to meet with any witness in preparation for trial.

1.17 NUMBER OF WITNESSES

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

1.18 ABSENCE OF EVIDENCE

The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.

1.21 EXPERT WITNESSES

You have heard witnesses give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness's qualifications, and all of the other evidence in the case.

1.27 BURDEN OF PROOF

When I say a particular party must prove something by "a preponderance of the evidence," or when I use the expression "if you find," or "if you decide," this is what I mean: When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

1.31 NO NEED TO CONSIDER DAMAGES INSTRUCTION

If you decide for Defendant Mitchell Quinn on the question of liability, then you should not consider the question of damages.

1.32 SELECTION OF PRESIDING JUROR; GENERAL VERDICT

Upon retiring to the jury room, you must select a presiding juror. The presiding juror will preside over your deliberations and will be your representative here in court.

Forms of verdict have been prepared for you.

[Forms of verdict read.]

Take these forms to the jury room, and when you have reached unanimous agreement on the verdict, your presiding juror will fill in, date, and sign the appropriate form.

1.34 DISAGREEMENT AMONG JURORS

The verdict must represent the considered judgment of each juror. Your verdict, whether for or against the parties, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to reexamine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of other jurors or for the purpose of returning a unanimous verdict.

All of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror. You are impartial judges of the facts.

2.05. STIPULATIONS OF FACT

The parties have stipulated, or agreed, that:

1. On April 27, 2015, a United States Marshals Service's task force based in Detroit, including Agent Mitchell Quinn, was investigating the whereabouts of Terrance Kellom.

2. Terrance Kellom was wanted on an arrest warrant.

3. On April 27, 2015, task force members arrived at 9543 Evergreen Road in Detroit.

4. Kevin Kellom, Terrance's father, lived at 9543 Evergreen Road, Detroit.

5. Terrance was present at 9543 Evergreen Road when task force members arrived at the house.

6. The task force members attempted to execute an arrest of Terrance Kellom.

7. During the attempt, Agent Quinn encountered Terrance and fired his service weapon.

8. Terrance was struck by four bullets.

9. One or more of the four bullet wounds resulted in Terrance's death.

You must now treat these facts as having been proved for the purpose of this case.

2.14. JUDGE'S COMMENTS TO LAWYER

I have a duty to caution or warn an attorney who does something that I believe is not in keeping with the rules of evidence or procedure. You are not to draw any inference against the side whom I may caution or warn during the trial.

7.01 GENERAL: POLICE DEPARTMENT/MUNICIPALITY NOT A PARTY

Defendant Mitchell Quinn is being sued as an individual. Neither the United States, nor the U.S. Marshals Service, nor the U.S. Immigrations and Customs Enforcement agency is a party to this lawsuit.

7.09 FOURTH AMENDMENT: EXCESSIVE FORCE AGAINST ARRESTEE OR DETAINEE- ELEMENTS

Plaintiff claims that Defendant Mitchell Quinn used excessive force against Terrance Kellom. To succeed on this claim, Plaintiff must prove that Defendant Mitchell Quinn used unreasonable force against Terrance.

If you find that Plaintiff has proved this element by a preponderance of the evidence, then you must decide for Plaintiff, and go on to consider the question of damages.

If on the other hand, you find that Plaintiff did not prove this element by a preponderance of the evidence, then you must decide for Defendant Mitchell Quinn, and you will not consider the question of damages.

7.10 FOURTH AMENDMENT: EXCESSIVE FORCE AGAINST ARRESTEE DEFINITION OF "UNREASONABLE"

In performing his job, an officer can use force that is reasonably necessary under the circumstances.

In deciding whether Defendant Mitchell Quinn used unreasonable force, you should consider all of the circumstances. Circumstances you may consider include the need for the use of force, the relationship between the need for the use of force and the amount of force used, the extent of the plaintiff's injury, any efforts made by the defendant to temper or limit the amount of force, the severity of the crime at issue, the threat reasonably perceived by the officer, whether the plaintiff was actively resisting arrest or was attempting to evade arrest by fleeing, and whether plaintiff was armed, but you are not limited to these circumstances.

An officer may use deadly force when a reasonable officer, under the same circumstances, would believe that the suspect's actions placed him or others in the immediate vicinity in imminent danger of death or serious bodily harm.

You must decide whether Defendant Quinn's use of force was unreasonable from the perspective of a reasonable officer facing the same circumstances that Defendant Quinn faced. You must make this decision based on what the officer knew at the time of the use of force, not based on matters learned after the use of

force. In deciding whether Defendant Quinn's use of force was unreasonable, you must not consider whether Defendant Quinn's intentions were good or bad.

7.26 DAMAGES: COMPENSATORY

If you find in favor of Plaintiff, then you must determine the amount of money that will fairly compensate Plaintiff for any injury that you find Terrance Kellom sustained as a direct result of the excessive force inflicted upon him.

Plaintiff must prove his damages by a preponderance of the evidence. Your award must be based on evidence and not speculation or guesswork. This does not mean, however, that compensatory damages are restricted to the actual loss of money; they include both the physical and mental aspects of injury, even if they are not easy to measure.

You should consider the following types of compensatory damages, and no others:

a. The physical pain and suffering that Terrance Kellom experienced. No evidence of the dollar value of physical pain and suffering has been or needs to be introduced. There is no exact standard for setting the damages to be awarded on account of these factors. You are to determine an amount that will fairly compensate the Plaintiff for the injury that Terrance Kellom sustained. Terrance's Estate may seek damages for loss of life.

b. The decedent's loss of the capacity to carry on and enjoy his life's activities in a way he would have done had he lived.

If you return a verdict for Plaintiff, but Plaintiff has failed to prove compensatory damages, then you must award nominal damages of $1.00.

7.28 DAMAGES: PUNITIVE

If you find for Plaintiff, you may, but are not required to, assess punitive damages against Defendant Quinn. The purposes of punitive damages are to punish a defendant for his conduct and to serve as an example or warning to Defendant Quinn and others not to engage in similar conduct in the future.

Plaintiff must prove by a preponderance of the evidence that punitive damages should be assessed against Defendant Quinn. You may assess punitive damages only if you find that his conduct was malicious or in reckless disregard of Terrance Kellom's rights. Conduct is malicious if it is accompanied by ill will or spite, or is done for the purpose of injuring Plaintiff. Conduct is in reckless disregard of Terrance Kellom's rights if, under the circumstances, Defendant simply did not care about his safety or rights.

If you find that punitive damages are appropriate, then you must use sound reason in setting the amount of those damages. Punitive damages, if any, should be in an amount sufficient to fulfill the purposes that I have described to you, but should not reflect bias, prejudice, or sympathy toward any party. In determining the amount of any punitive damages, you should consider the following factors:

- the reprehensibility of Defendant's conduct;
- the impact of Defendant's conduct on Terrance Kellom;
- the relationship between Terrance Kellom and Defendant;

- the likelihood that Defendant would repeat the conduct if an award of punitive damages is not made;
- the relationship of any award of punitive damages to the amount of actual harm that Terrance Kellom suffered.