
**IN THE SECOND JUDICIAL DISTRICT COURT,
IN AND FOR DAVIS COUNTY, STATE OF UTAH**

STATE OF UTAH,

Plaintiff,

vs.

[NAME],

Defendant.

JURY INSTRUCTIONS

Case No.:

Judge: Thomas L. Kay

Ladies and Gentlemen: Attached are instructions numbered one (1) through twenty-eight (28), given to you at the beginning of the trial. You will receive additional instructions at a later time in the proceedings. Taken together, these instructions govern your conduct and deliberations during the trial of this case and must be carefully followed.

Dated this _____ day of August, 2014.

BY THE COURT:

THOMAS L. KAY
DISTRICT COURT JUDGE

1. GENERAL INSTRUCTION

There are certain laws and rules which apply to this case. I will explain them to you from time to time during the trial. Please pay careful attention. Each of you has been given a copy of these instructions. This copy is yours to keep. As I read these instructions to you, please follow along on your copy. Keep in mind the following points:

Many Instructions. There will be many instructions. All are equally important. Do not pick one and ignore the rest. Think about each instruction in the context of all the others.

Obey Instructions. You must obey the instructions. You are not allowed to reach decisions that go against the law.

Gender – Singular/Plural. In these instructions, the masculine gender such as “he” or “him” includes the feminine “she” or “her” and the singular such as “defendant” includes the plural “defendants” when appropriate.

Note Taking. You may take notes during the trial, but do not over do it, and do not let it distract you from following the evidence. The use of notes in the jury room to refresh your memory is perfectly acceptable. But let me caution you not to rely excessively upon your notes. The lawyers will review important evidence in their closing arguments and help you focus on that which is most relevant to your decision. I also caution that notes are not evidence. Use them only to aid personal memory or concentration. One juror’s opinion should not be given excessive consideration solely because that juror has taken notes.

Keep an Open Mind. Do not form an opinion about the ultimate issues in this case until you have listened to all the evidence and the lawyers' summaries, along with the instructions on the law. Keep an open mind until then.

2. WHAT RULES APPLY TO RECESSES

From time to time I will call for a recess. It may be for a few minutes, a lunch break, overnight or longer. During recesses, do not talk about this case with anyone; not family, friends or even each other. The Clerk may ask you to wear a badge identifying yourself as a juror so that people will not try to discuss the case with you. Do not mingle with the lawyers, the parties, the witnesses or anyone else connected with the case. You may say "hello", or exchange similar greetings or civilities with these persons, but do not engage in conversations. Do not accept from or give to any of these persons any favors, however slight, such as rides or food. Finally, do not read about this case in the newspaper or listen to or watch any reports on television or radio. These constraints are necessary for a fair trial.

3. THE GENERAL ROLE OF THE JUDGE, THE JURY AND THE LAWYERS

The judge, the jury and the lawyers are all officers of the Court and play important roles in the trial.

Judge. It is my role as judge to decide all legal issues, supervise the trial and instruct the jury on the LAW that it must apply.

Jury. It is your role as the jury to follow that law and decide the factual issues. Factual issues generally relate to WHO, WHAT, WHEN, WHERE, HOW or similar things concerning which evidence will be presented.

Lawyers. It is the role of the lawyers to present evidence, generally by calling and questioning witnesses and presenting exhibits. Each lawyer will also try to persuade you to accept his version of the facts and to decide the case in favor of his client.

Keep in mind that neither the lawyers nor I actually decide the case, because that is your role. Do not be influenced by what you think our personal opinions are; rather, you decide the case based upon the law explained in these instructions and the evidence presented in court.

4. OUTLINE OF THE TRIAL

The trial will generally proceed as follows:

Opening Statements. The lawyers will outline what the case is about and indicate what they think the evidence will show.

Presentation of Evidence. The plaintiff will offer its evidence first followed by the defendant. Each side may also offer rebuttal evidence after hearing the witnesses and seeing the exhibits offered by the other side.

Instructions on the Law. After each side has presented its evidence, I will supplement these written instructions and review them with you.

Closing Arguments. The lawyers will then summarize and argue the case. They will share with you their respective views of the evidence, how it relates to the law and how they think you should decide the case.

Jury Deliberation. The final step is for you to retire to the jury room and deliberate until you reach a verdict.

5. THE CHARGE AND THE PRESUMPTION OF INNOCENCE

The defendant in this case has been accused of committing a crime. The accusation is in a written document called an INFORMATION, which will be read or summarized for you following this instruction. As you listen, keep in mind that the defendant has answered the charge by saying "not guilty." The defendant is presumed to be innocent of the charge.

[THE INFORMATION WILL NOW BE READ TO THE JURY]

6. WHAT IS THE JURY'S ROLE IN THIS CASE?

You must decide whether the charge against the defendant has been proven beyond a reasonable doubt. Your decision is called a VERDICT. Your verdict must be based only on the evidence produced here in court. It must be based on facts, not on speculation. Do not guess about any fact. However, you may draw reasonable inferences or arrive at reasonable conclusions from the evidence presented.

7. WHAT IS EVIDENCE?

Evidence is anything that tends to prove or disprove the existence of a disputed fact. It can be testimony, or documents, or objects, or photographs, or stipulations, or certain qualified opinions, or any combination of these things. Sometimes the lawyers may agree that certain facts exist. You should accept any agreed or stipulated facts as having been proved. In limited instances, I may take "judicial notice" of a well-known fact. If this happens, I will explain how you should treat it.

Two classes of evidence are recognized and admitted in courts of law, upon either or both of which a jury may lawfully base its findings, whether favorable to the State or to the defendant.

One type of evidence is known as direct and the other as circumstantial. The law makes no distinction between the two classes as to the degree of proof required for conviction or as to their effectiveness in defendant's favor, but respects each for such convincing force as it may carry and accepts each as a reasonable method of proof.

Direct evidence of a person's conduct at any time in question consists of the testimony of every witness who, with any of his own physical senses, perceived such conduct or any part thereof, and which testimony describes or relates what thus was perceived. All other evidence admitted in the trial is circumstantial in relation to such conduct, and, insofar as it shows any act, statement or other conduct, or any circumstances of fact, tending to prove by reasonable

inference the innocence or guilt of the defendant, it may be considered by you in arriving at a verdict.

8. OPINION TESTIMONY

Under certain circumstances, witnesses are allowed to express an opinion. A person who by education, study or experience has become an expert in any art, science or profession, may give his opinion and the reason for it. A layman (or, a non-expert) is also allowed to express an opinion if it is based on personal observations and it is helpful to understanding his testimony or the case. You are not bound to believe anyone's opinion. Consider it as you would any other evidence, and give it the weight you think it deserves.

9. WHAT IS NOT TO BE CONSIDERED OR USED AS EVIDENCE?

I have explained to you what evidence is. Now I will tell you about some things which do not qualify as evidence or which, for some other good reason, you should not consider in reaching your verdict.

Accusation. The fact that formal charges have been filed accusing the defendant of committing a crime is not evidence of guilt. The defendant is a competent witness in the defendant's own behalf, and the fact that the defendant is charged with the commission of a crime should not be regarded by you as tending to impeach or discredit the defendant's testimony.

Punishment. You may be aware of the gravity of the offense charged and the range of potential penalties, but you should not consider what actual punishment the defendant may receive if found guilty. That is for the judge to decide based upon the applicable law.

Right to Remain Silent. If the defendant chooses not to testify in this case, do not consider that as evidence of guilt. The Constitution provides that an accused person has the right not to testify and you should not draw any negative inferences based upon the reliance on this right.

Lawyer Statements. What the lawyers say is not evidence. Their purpose is to give you a preview of expected evidence and to help you understand the evidence from their viewpoint.

Personal Investigation. Evidence is not what you can find out on your own. You should not make any investigation about the facts in this case. Do not make personal inspections, observations or experiments. Do not view premises, things or articles not produced in court. Do not let anyone else do anything like this for you. Do not look for information in law books, dictionaries or public or private records which are not produced in court.

Out of Court Information. Do not consider anything you may have heard or read about this case in the media or by word of mouth or other out-of-court communication. You must rely solely on the evidence that is produced and received in court.

10. THE JUDGE DECIDES WHAT EVIDENCE IS ADMISSIBLE

Sometimes a question will be raised about whether certain evidence is proper for the jury to consider. This type of question is called an OBJECTION. I rule on objections. If an objection is SUSTAINED the evidence is kept out and you should not consider it. If an objection is OVERRULED the evidence comes in and you may consider it. If evidence is STRICKEN you shall ignore it.

11. HOW TO MAKE DECISIONS ABOUT THE EVIDENCE

Once evidence is admitted, you must decide three things about it: (1) Whether it should be believed; (2) How important it is; and, (3) What you can infer or conclude from it.

Use your common sense as a reasonable person in making these decisions. Review all the evidence. Do not imagine things which have no evidence to back them up. Consider the evidence fairly without any bias or sympathy toward either side.

12. DECIDING WHETHER TO BELIEVE A WITNESS

As each witness testifies, you must decide how accurate that testimony is. It may help you to ask yourself questions such as these:

Personal Interest. Does the witness have a personal interest in how the trial comes out?

Other Bias. Does the witness have some other bias or motive to testify a certain way?

Demeanor: What impression is made by the witness's appearance and conduct while answering questions?

Consistency. Did the witness make conflicting statements or contradict other evidence?

Knowledge and Memory. Did the witness have a good opportunity to know the facts and the ability to remember them?

Reasonableness. Is the testimony reasonable in light of human experience?

You are not required to believe all that a witness says. You are entitled to believe one witness as against many or many as against one, in accordance with your honest convictions.

13. WHAT IF A WITNESS PURPOSELY GIVES FALSE TESTIMONY?

If you believe a witness has purposely given false testimony about anything relevant to the case, you may disregard not only the false testimony but the remaining testimony from that witness unless it is corroborated by other evidence; in which event you should give it what weight you think it deserves.

14. WHO IS RESPONSIBLE TO CONVINCING THE JURY?

The prosecution has the burden of proof. It is the one making the accusations in this case. The defendant is not required to prove innocence - you must start by assuming it. According to our law, the defendant is presumed to be innocent unless proven guilty beyond a reasonable doubt. This is a humane provision of the law intended to guard against the danger of an innocent person being unjustly punished.

15. HOW CONVINCED MUST THE JURY BE BEFORE DECIDING THE DEFENDANT IS GUILTY?

Before you can give up your assumption that the defendant is innocent, you must be convinced that the defendant's guilt has been proven beyond a reasonable doubt.

16. WHAT IS A REASONABLE DOUBT?

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find him guilty. If, on the other hand, you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

17. HOW TO EVALUATE DOUBT

If after such full and impartial consideration some possible doubt exists, you must determine whether such doubt is reasonable in light of all the evidence. Ask yourselves if the doubt is consistent with reason and common sense. The law does not require that the evidence dispel all possible or conceivable doubt, but rather that it dispel all reasonable doubt. That is what is meant by the phrase "proof beyond a reasonable doubt".

18. USE OF ELECTRONIC COMMUNICATION TECHNOLOGY DURING TRIAL

Jurors have caused serious problems during trials by using computer and electronic communication technology. You may be tempted to use these devices to investigate the case, or to share your thoughts about the trial with others. However, you must not use any of these electronic devices while you are serving as a juror.

You violate your oath as a juror if you conduct your own investigations or communicate about this trial with others, and you may face serious consequences if you do. Let me be clear: do not “Google” the parties, witnesses, issues, or counsel; do not “Tweet” or text about the trial; do not use Blackberries or iPhones to gather or send information on the case; do not post updates about the trial on Facebook pages; do not use Wikipedia or other internet information sources, etc. Even using something as seemingly innocent as “Google Maps” can result in a mistrial.

Please understand that the rules of evidence and procedure have developed over hundreds of years in order to ensure the fair resolution of disputes. The fairness of the entire system depends on you reaching your decisions based on evidence presented to you in court, and not on other sources of information.

Post-trial investigations are common and can disclose these improper activities. If they are discovered, they will be brought to my attention and the entire case might have to be retried, at substantial cost.

[OPENING STATEMENTS BY COUNSEL]

[THE EVIDENCE WILL NOW BE PRESENTED]

19. INSTRUCTIONS ON THE LAW THAT APPLIES TO THIS CASE

The Clerk has attached to your copy of these instructions some additional pages which contain instructions relating to the particular laws or rules that apply in this case. These additional instructions begin with instruction number twenty-eight (28). We will read those after completing our review of the following instructions which relate essentially to the procedure that you should follow.

20. THE JUDGE IS IMPARTIAL

The Constitution and the laws of this state absolutely prohibit the trial judge from making any comment about the witnesses or the evidence and I am not in any way permitted to assist you in determining what is or is not the truth in this case.

Therefore, you are instructed that if during the trial I have said or done anything which has suggested to you that I am inclined to favor the claim or position of either party, you are not to permit yourselves to be influenced by any such suggestion.

I have not intended to indicate any opinion as to which witnesses are, or are not, worthy of belief, nor which party should prevail. If any expression of mine has seemed to indicate an opinion relative to any of these matters, you should disregard it, because you are the sole and only judges of the facts.

21. WHAT TO TAKE WITH YOU INTO THE JURY ROOM

You may take the following things with you when you go into the jury room to discuss this case:

- a. all exhibits admitted in evidence;
- b. your notes (if any);
- c. your copy of these instructions; and
- d. the verdict form or forms.

22. WHAT TO DO IN THE JURY ROOM

The first thing you should do in the jury room is choose a person to be in charge. This person is called the "Foreperson" or the "Chair." The Chair's duties are:

- a. To keep order and allow everyone a chance to speak;
- b. To represent the jury in any communications you make; and
- c. To sign your verdict and bring it back in court.

In deciding what the verdict should be, all jurors are equal. The Chair has no more power than any other juror.

23. CONSIDER EACH OTHER'S OPINION, THEN REACH YOUR OWN DECISION BASED UPON HONEST DELIBERATION

It is rarely productive or good for a juror, upon entering the jury room, to make an emphatic expression of opinion or to announce a determination to stand for a certain verdict. When that is done at the outset, a person's sense of pride may block appropriate consideration of

the case. Use your common memory, your common understanding and your common sense. Talk about the case with each other as you ponder and deliberate.

Your verdict must be your own. Do not make a decision just to agree with everyone else. However, you should respect and consider the opinions of the other jurors. If you are persuaded that a decision you initially made was wrong, do not hesitate to change your mind. Help each other arrive at the truth. Also, do not resort to chance or some form of decision-making other than honest deliberation.

24. WHAT TO DO IF YOU HAVE QUESTIONS DURING DELIBERATION

If you think you need more information or a clarification, write a note and give it to the bailiff. I will review it with the lawyers. We will answer your question whenever appropriate. However, these instructions should contain all the information you need to reach a verdict based upon the evidence.

25. FOCUS ON THIS CASE ALONE

Your duty is to decide this case and this case alone. You should not use this case as a forum for correcting perceived wrongs in other cases, or as a means of expressing individual or collective views about anything other than the guilt or innocence of this defendant. Your verdict should reflect the facts as found by you applied to the law as explained in these instructions and should not be distorted by any outside factors or objectives.

The final test of the quality of your service will be the verdict you return. You will contribute to efficient judicial administration if you focus exclusively on this case and return a just and proper verdict.

26. REACHING A VERDICT

This being a criminal case, your verdict must be unanimous; all jurors must agree. When you are all in agreement, then you have reached a verdict and your work is finished.

27. HOW TO REPORT YOUR VERDICT

When you have reached a verdict, the Chair should date and sign the verdict form which corresponds to your decision. Then notify the bailiff that you are ready to return to court.

28. WHAT HAPPENS AFTER THE VERDICT HAS BEEN REPORTED

After you have given your verdict to the judge, he or the clerk may ask each of you about it to make sure you agree with it. Then you will be excused from the jury box and you may leave at any time. You may remain in the courtroom, if you wish, to watch the rest of the proceedings, which should be quite brief.

After you are excused, you may talk about the case with anyone. Likewise, you are not required to talk about it. If anyone attempts to talk to you about the case when you do not want to do that, please tell the Court Clerk.