
THIRD DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

Plaintiff,

JURY INSTRUCTIONS

vs.

Case No.
Judge Stephen L. Roth

Defendant.

Members of the Jury: Attached are instructions numbered 1 through 25, given to you at the beginning of this trial, and instructions 26 through _____, which were presented to you 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 considered and followed.

DATED this _____ day of March, 2005.

BY THE COURT:

Stephen L. Roth
DISTRICT JUDGE

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JURY INSTRUCTIONS

(Criminal Case)

1. GENERAL INSTRUCTION

There are certain laws and rules which apply to this case. I'll explain them to you from time to time in order to give you the information that you need to fulfill your role as jurors at each stage of the trial. I will give you the first set of instructions at this point. You will receive further instructions before evidence is presented and the final set of instructions after the close of evidence. 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, you may follow along on your copy, or not, as you wish. Keep in mind the following points:

Obey the Instructions. You must obey the instructions. Some of these instructions give you information about how the trial will proceed, the rules that govern this process, and the roles of the participants, including your role as jurors. Other instructions tell you what the law is that you are to apply in reaching your verdict in this case. You must not reach decisions that go against the law. If any attorney makes statements of the law that differ from the instructions on the law that I give to you, you should disregard such statements and rely entirely on these instructions.

Many Instructions. There will be many instructions. All are important. Don't pick out one and ignore the rest. Think about each instruction in the context of all the others.

Gender - Singular/Plural. In these instructions, any references to "she" or "her" also include "he" or "him," or *vice versa*, as appropriate to this case; and the singular, such as "defendant" includes the plural "defendants," when appropriate.

Note Taking. The Bailiff has provided you with notepads and pens. You may take notes during the trial, but don't over do it, and don't let it distract you from following the evidence. The lawyers will review the evidence in their closing arguments and help you focus on what is most relevant to your decision. I also caution that notes are not evidence. Use them only to aid personal memory or concentration. Keep in mind that you must each arrive at a verdict independently, and one juror's memory of the evidence or opinion should not be given excessive consideration solely because that juror has taken notes.

Keep an Open Mind. Don't form or express an opinion about the ultimate issues in this case until you have listened to all the evidence and the lawyers' summaries, along with the final instructions on the law. Keep an open mind until your deliberations are completed.

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 with each other. The bailiff may ask you to wear a badge identifying yourself as a juror so that people will not try to discuss the case with you. Don't mingle with the lawyers, the parties, the witnesses or anyone else connected with the case. You may say "hello" or exchange similar brief civilities with these persons, in passing, but don't engage in any conversation. Don't accept from or give to any of these persons any favors, however slight, such as rides or food. The lawyers and parties are naturally concerned to avoid any hint of improper contact with you, so don't think that they are being purposely rude if they avoid any interaction with you during the course of this trial. If anyone tries to talk to you about the case, let the bailiff know immediately. **You may communicate with the bailiff or among yourselves about topics other than a subject of the trial. Don't read about this case in the newspaper or listen to any reports on television or radio, if there are any. Finally, don't form or express an opinion regarding any subject of the trial until you are sent out for deliberation at the end of the trial. These restraints are necessary for a fair trial.**

3. THE ROLES 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.¹

¹ In the case of alternate juror(s): An alternate juror has the same responsibilities as any other

Lawyers. It is the role of the lawyers to present evidence, generally by calling and questioning witnesses and presenting exhibits. It is the responsibility of each of the lawyers to be an advocate, and each will try to persuade you to accept her version of the facts and to decide the case in favor of her client.

Keep in mind that neither the lawyers nor I actually decide the case, because that is your role. Don't 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.

Additional instructions on the Law. After each side has presented its evidence, I will give you additional instructions on the law that applies to this case.

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. You will be given additional instructions about how you are to do that later.

5. THE CHARGE(S) and THE PRESUMPTION OF INNOCENCE

juror, as he may be required to take the place of one of the jurors in the panel in the event an original juror is unable to complete her service. Any alternate juror selected will be identified as such once the case has been presented and the jury is ready to retire to deliberate on a verdict.

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 IS READ OR SUMMARIZED FOR THE JURY]

Type in the Information's count(s) here, LEAVING OUT THE DEGREE OF THE OFFENSE (e.g., "Third Degree Felony", "Class A Misdemeanor", etc.) [LEAVE the BALANCE OF PAGE BLANK; if more than one page is needed for the counts, number the second and following pages 4a, 4b and so on]

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

You must decide whether each 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. Don't 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; this is called a stipulation. You should accept any stipulated facts as having been proved. In limited instances, I may take "judicial notice" of a well-known fact. If that happens, I will explain how you should treat it.

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 her opinion and the reason for it. A layperson (that is, 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've explained to you what evidence is. Now I'll 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 has entered a plea of not guilty and is presumed to be innocent. As I will discuss in more detail later in these instructions, it is the prosecution's burden to prove to you that the defendant is guilty beyond a reasonable doubt; the defendant does not have the burden to prove that he or she is innocent.

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, you cannot 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 a defendant's reliance on this right. If the defendant does choose to testify, his or her testimony should be given the same consideration you would give to the testimony of any other witness. The fact that a person is accused of a crime is no evidence of that person's guilt and is no reason for rejecting his or her testimony; it should be weighed the same way you weigh the testimony of any other witness.

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. Don't let anyone else do anything like that for you. Don't look for information on the internet, in law books, dictionaries, public or private records or any other sources 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 any other out-of-court communication from any source. 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, nor should you guess as to what the evidence might have been or as to the reason for the objection. If an objection is OVERRULED the evidence comes in and you may consider it. If evidence which you have heard or seen is STRICKEN you must ignore it.

My decisions regarding the admission of evidence involve issues of law, and I am not giving any opinion as to which witnesses are or are not worthy of belief or as to which party should prevail in the case. Don't be concerned about the reasons for my rulings, and don't try to infer anything about the case from those rulings.

Further, if I do or say anything during the course of this trial that suggests to you that I favor the position of either party, whether in my rulings or otherwise, it is entirely unintentional; and you must not be influenced by that in any way.

[OPENING STATEMENTS BY COUNSEL]

11. HOW TO MAKE DECISIONS ABOUT THE EVIDENCE

It will be your duty to determine your verdict relying solely on the evidence presented during the trial. For that purpose you should consider all of the evidence together, fairly, impartially and conscientiously, putting aside any bias, prejudice, or preconceptions.

Once evidence is admitted, you must decide three things about it: Whether it should be believed, how important it is, and what you can reasonably infer or conclude from it. An inference is a conclusion that logic, reason, or common sense leads you to draw from a fact or group of facts that the evidence has established.

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

Where there is conflicting evidence, you should try to reconcile the conflict so far as you reasonably can. Where the conflict cannot be reconciled, you are the final judges and must determine from the evidence what the facts are.

12. DECIDING WHETHER TO BELIEVE A WITNESS

You are the sole judges of the importance of the evidence, the believability of the witnesses and the facts. There is no firm rule that I can give you for determining whether a witness is truthful. As each witness testifies, you must decide how accurate that testimony is and what weight to give it, using your own good judgment and experience in life. In evaluating testimony, 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 may also apply any other common sense yardstick to the testimony you hear and the other evidence you receive. You are not required to believe any witness or 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. The mere fact that a witness is a police officer, in itself, does not make that person's testimony more or less credible, but such testimony must be weighed in the same way as you would any other witness.

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 any of the remaining testimony from that witness, or you may give the remaining testimony whatever weight you think it deserves.

[THE EVIDENCE IS PRESENTED AT THIS POINT]

[AFTER THE CLOSE OF EVIDENCE, THE CLERK ADDS TO EACH COPY ADDITIONAL INSTRUCTIONS APPLICABLE TO THIS CASE]

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 an important and 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 presumption that the defendant is innocent, you must be convinced that the defendant's guilt has been proven beyond a reasonable doubt. Proof beyond a reasonable doubt is that degree of proof which satisfies the mind and convinces the understanding of reasonable persons who are bound to act conscientiously upon it. The prosecution's proof must obviate, or in other words eliminate, all reasonable doubt.

16. WHAT IS A REASONABLE DOUBT?

A reasonable doubt is one based upon reason and common sense. A fanciful or wholly speculative possibility ought not to defeat proof beyond a reasonable doubt. Rather, a reasonable doubt is one that would be retained by reasonable men and women after a full and impartial consideration of all the evidence, and must arise from the evidence or lack of evidence in the case.

17. 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 to this case. These additional instructions begin with instruction number twenty-six (26). We will read those after completing our review of the following instructions which relate essentially to the procedure that you should follow when you are released to deliberate.

18. 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 that will be provided to you.

19. 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. The Foreperson'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 to court.

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

20. YOUR VERDICT MUST BE YOUR OWN DECISION ARRIVED AT AFTER OPEN AND HONEST DELIBERATION

Consider each other's opinions, 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.

In the end, your verdict must be your own. Don't make a decision just to agree with everyone else. You should, however, respect and consider the opinions of the other jurors. If you are persuaded that a decision you initially made was wrong, don't hesitate to change your mind. Help each other arrive at the truth. Your decision must be unanimous. In an attempt to reach a decision, you may not resort to chance or any form of decision-making other than honest deliberation.

21. 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 that has been presented to you. **You should understand that no further evidence can be provided to you.**

22. 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 in the broader society, or as a means of expressing views about anything other than the guilt or innocence of this defendant. Your verdict should reflect the law given to you in these instructions applied to the facts that you find to be supported by the evidence. Your decision 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 make an important contribution to justice and your community if you focus exclusively on this case and return a just and proper verdict.

23. REACHING A VERDICT

As I have said, 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.

24. HOW TO REPORT YOUR VERDICT

When you retire to deliberate, you will be provided with a Verdict Form, which is self-explanatory. The Foreperson should fill out the Verdict Form in accordance with the unanimous decision of the jury and then date and sign it.

Once the Verdict Form is signed, notify the bailiff that you are ready to return to court. The Foreperson should present the Verdict Form to the bailiff, at the direction of the judge, when you return to the courtroom to deliver your verdict.

25. WHAT HAPPENS AFTER THE VERDICT HAS BEEN REPORTED

After you have given your verdict to the judge, the prosecution and the defense will be asked to stand, and he will direct the clerk to read the jury's verdict. After that, the judge or the clerk may ask each of you about the verdict to make sure you agree with it. Then you will be released from your jury service and you may leave at any time.

After you are excused, you may talk about the case with anyone. Likewise, you are not required to talk about it, if you don't want to. If anyone attempts to talk to you about the case when you don't want to do that, please tell the Bailiff or the Court Clerk. Finally, if you do decide to discuss the case with anyone, keep in mind that your fellow jurors freely stated their opinions in the jury room with the understanding that they were speaking in confidence. Please respect the privacy of the views of your fellow jurors.

[ADDITIONAL INSTRUCTIONS ADDED AFTER THIS PAGE]