

INSTRUCTION NO. 16

It is desirable that there be a verdict in every case. The trial of a lawsuit involves considerable time and effort, and the parties are entitled to have their rights determined once and for all in every case. The twelve jurors chosen to try this case should be as well qualified to do so as any other twelve that might hereafter be chosen. Open and frank discussion by you in your jury room of the evidence in this case may aid you in agreeing upon the facts; however, no juror should ever agree to a verdict that violates the instructions of the Court, nor find as a fact that which under the evidence and his conscience he believes to be untrue. Yet each of you should respect the opinions of your fellow jurors as you would have them respect yours, and in a spirit of tolerance and understanding endeavor to bring the deliberations of the whole jury to an agreement upon a verdict.

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AUG 18 1983

FREEMAN R. BOSLEY, JR., Clerk  
*FB*  
Deputy

GIVEN: 8/18/83  
JUDGE JAMES J. GALLAGHER

INSTRUCTION NO. 1

Those who participate in a jury trial must do so in accordance with established rules. This is true of the parties, the witnesses, the lawyers and the judge. It is equally true of jurors. It is the Court's duty to enforce those rules and to instruct you upon the law applicable to the case. It is your duty to follow the law as the Court gives it to you.

However, no statement, ruling or remark that I may make during the trial is intended to indicate my opinion of what the facts are. It is your duty to determine the facts and to determine them only from the evidence and the reasonable inferences to be drawn from the evidence. In this determination, you alone must decide upon the believability of the witnesses and the weight and value of the evidence.

In determining the believability of a witness and the weight to be given to testimony of the witness you may take into consideration the witness' manner while testifying, the ability and opportunity of the witness to observe and remember any matter about which testimony is given, any interest, bias or prejudice the witness may have, the reasonableness of the witness' testimony considered in the light of all of the evidence in the case, and any other matter that has a tendency in reason to prove or disprove the truthfulness of the testimony of the witness.

Faithful performance by you of your duties as jurors is vital to the administration of justice. You should perform your duties without prejudice or fear, and solely from a fair and impartial consideration of the whole case.

GIVEN: 8/17/83  
JUDGE JAMES J. GALLAGHER

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FREEMAN R. Freeman, JR., Clerk  
Deputy

INSTRUCTION NO. 2

You must not assume as true any fact solely because included in or suggested by a question asked a witness. A question is not evidence, and may be considered only as it supplies meaning to the answer.

From time to time the attorneys may make objections. They have a right to do so and are only doing their duty as they see it. You should draw no inference from the fact that an objection has been made.

If the Court sustains an objection to a question, you will disregard the entire question and you should not speculate as to what the answer of the witness might have been. The same applies to exhibits offered but excluded from evidence after an objection has been sustained. You will also disregard any answer or other matter which the Court directs you not to consider and anything which the Court orders stricken from the record.

The opening statements of attorneys are not evidence. Also, you must not consider as evidence any statement or remark or argument by any of the attorneys addressed to another attorney or to the Court unless it is in the form of a stipulation or agreement between them or an admission by one of them concerning a particular matter.

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AUG 18 1983

FREEMAN R. Rh /, JR., Clerk  
Deputy

GIVEN: 8/17/83  
JUDGE JAMES J. GALLAGHER

INSTRUCTION NO. 3

The law applicable to this case is stated in these instructions and the two which the Court read to you immediately after you were sworn as jurors. All of the instructions will be given to you to take to your jury room for use during your deliberations.

You must not single out certain instructions and disregard others or question the wisdom of any rule of law.

The Court does not mean to assume as true any fact referred to in these instructions but leaves it to you to determine what the facts are.

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FREEMAN R.                      JR., Clerk  
                     Deputy

GIVEN: 8/17/83  
JUDGE JAMES J. GALLAGHER

INSTRUCTION NO. 4

The fact that the defendant has been charged with offenses is not evidence and it creates no inference that any offense was committed or that the defendant is guilty.

The defendant is presumed to be innocent unless and until, during your deliberations upon your verdict, you find him guilty. This presumption of innocence places upon the State the burden of proving beyond a reasonable doubt that the defendant is guilty.

If the evidence in this case leaves in your mind a reasonable doubt as to the defendant's guilt on any Count charged against him you must return a verdict of "Not Guilty" on that Count.

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AUG 18 1983

FREEMAN R. BUBLEY, JR., Clerk

*RWC*  
Deputy

*8/17/83*  
Clerk of GALVESTON

INSTRUCTION NO. 5

As to Count I, if you find and believe from the evidence beyond a reasonable doubt:

First, that on or about April 27, 1982, in the City of St.

Louis, State of Missouri, the defendant caused the death of [REDACTED] by stabbing her, and

Second, that the defendant intended to take the life of [REDACTED] and

Third, that the defendant knew that he was practically certain to cause the death of [REDACTED] and

Fourth, that the defendant considered taking the life of [REDACTED] and reflected upon this matter coolly and fully before doing so,

then you will find the defendant guilty under Count I of capital murder.

However, if you do not find and believe from the evidence beyond a reasonable doubt each and all of these propositions, you must find the defendant not guilty under Count I of that offense.

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AUG 18 1983

FREEMAN R. [REDACTED], JR., Clerk  
Deputy

GIVEN: 8/17/83  
JUDGE JAMES J. GALLAGHER

INSTRUCTION NO. 6

As to Count I, if you do not find the defendant guilty of capital murder, you must consider whether he is guilty of murder in the second degree.

As to Count I, if you find and believe from the evidence beyond a reasonable doubt:

First, that on or about April 27, 1982, in the City of St.

Louis, State of Missouri, the defendant caused the death

of [REDACTED] by stabbing her, and

Second, that the defendant intended to take the life of

[REDACTED] and

Third, that the defendant did not do so in anger, fear

or agitation suddenly provoked by the unexpected

acts or conduct of [REDACTED]

then you will find the defendant guilty under Count I of murder in the second degree.

However, if you do not find and believe from the evidence beyond a reasonable doubt each and all of these propositions, you must find the defendant not guilty under Count I of that offense.

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FREEMAN R. AUGER, JR., Clerk  
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Deputy

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INSTRUCTION NO. 7

As to Count I, if you do not find the defendant guilty of capital murder or murder in the second degree, then you must consider whether he is guilty of manslaughter.

As to Count I, if you find and believe from the evidence beyond a reasonable doubt that on or about April 27, 1982, in the City of St. Louis, State of Missouri, the defendant caused the death of [REDACTED] by stabbing her,

Then you will find the defendant guilty under Count I of manslaughter.

However, if you do not find and believe from the evidence beyond a reasonable doubt each and all of the foregoing, then you must find the defendant not guilty under Count I of that offense.

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FREEMAN R. [REDACTED] R., Clerk  
Deputy.

GIVEN: 8/11/83  
JUDGE JAMES C. GALLAGHER



INSTRUCTION NO. 8

As to Count II, if you find and believe from the evidence beyond a reasonable doubt:

That on or about April 27, 1982, in the City of St.

Louis, State of Missouri, the defendant attempted

to kill or cause serious physical injury to [REDACTED]

[REDACTED] by stabbing or cutting her,

then you will find the defendant guilty of assault in the first degree. If you so find, use Verdict B.

However, if you do not find and believe from the evidence beyond a reasonable doubt each and all of these propositions, you must find the defendant not guilty of that offense. If you so find, use Verdict C.

But if you further find and believe from the evidence beyond a reasonable doubt that the defendant committed such assault by means of a dangerous instrument, then you will find the defendant guilty of assault in the first degree by means of a dangerous instrument. If you so find, use Verdict A.

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FREEMAN R. DUSLEY, JR., Clerk  
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Deputy

GIVEN: 21-12  
JUDGE JAMES J. GALLAGHER

INSTRUCTION NO. 9

As to Count III, if you find and believe from the evidence beyond a reasonable doubt:

That on or about April 27, 1982, in the City of St. Louis, State of Missouri, the defendant attempted to kill or cause serious physical injury to [REDACTED] by cutting her,

then you will find the defendant guilty of assault in the first degree. If you so find, use Verdict B.

However, if you do not find and believe from the evidence beyond a reasonable doubt each and all of these propositions, you must find the defendant not guilty of that offense. If you so find, use Verdict C.

But if you further find and believe from the evidence beyond a reasonable doubt that the defendant committed such assault by means of a dangerous instrument, then you will find the defendant guilty of assault in the first degree by means of a dangerous instrument. If you so find, use Verdict A.

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FREEMAN R. BUSSETT, JR., Clerk  
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JUDGE JAMES J. CLEGG

INSTRUCTION NO. 10

The following terms used in these instructions are defined as follows:

Dangerous instrument - Means any instrument or article which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury.

Serious physical injury - Means injury that creates a substantial risk of death or that causes serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

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FREEMAN R. BUSLEY, JR., Clerk

  
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GIVEN: 8/17/83  
JUDGE JAMES J. GALLAGHER

INSTRUCTION NO. 11

The defendant is charged with a separate offense in each Count submitted to you. Each offense and the evidence and law applicable to it should be considered separately. Any evidence which was or has been limited to one of the offenses charged or one purpose should not be considered by you as to another offense charged or for any other purpose.

You may find the defendant guilty or not guilty on any or all of the Counts submitted against him.

You should render a separate verdict as to each Count submitted against the defendant.

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FREEMAN R. BOSLEY, JR., Clerk

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INSTRUCTION NO. 12

One of the issues in this case is whether the defendant was present at the time and place the offense is alleged to have been committed. On that issue you are instructed as follows:

1. The state has the burden of proving beyond a reasonable doubt that the defendant was present at the time and place the offense is alleged to have been committed.

2. If the evidence in this case leaves in your mind a reasonable doubt that the defendant was present at the time and place the offense is alleged to have been committed, then you must find the defendant not guilty.

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FREEMAN R. BOSLEY, JR., Clerk  
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Deputy

*8/17/63*

INSTRUCTION NO. 13

Circumstantial evidence is the proof of facts or circumstances that give rise to a reasonable inference of other facts that tend to show the guilt or innocence of the defendant. Circumstantial evidence should be considered by you together with all the other evidence in the case in arriving at your verdict.

You should not find the defendant guilty unless the facts and circumstances proved are consistent with each other and the guilt of the defendant, and inconsistent with any reasonable theory of his innocence.

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*[Signature]*  
JAMES J. KENNEDY

INSTRUCTION NO. 14

When you retire to your jury room you will first select one of your number to act as your foreman and to preside over your deliberations.

You will be provided with forms of verdict for your convenience.

You cannot return any verdict as the verdict of the jury unless all twelve jurors concur in and agree to it, but it should be signed by your foreman alone.

When you have concluded your deliberations you will complete the applicable form to which you unanimously agree and return it with all unused forms and the written instructions of the Court.

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FREEMAN R. BOSLEY, JR., Clerk

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JUDGE JAMES J. GALLAGHER

INSTRUCTION NO. 15

The attorneys will now have the opportunity of arguing the case to you. Their arguments are intended to help you in understanding the evidence and applying the law, but they are not evidence.

You will bear in mind that it is your duty to be governed in your deliberations by the evidence as you remember it, the reasonable inferences which you believe should be drawn therefrom, and the law as given in these instructions.

It is your duty, and yours alone, to render such verdict under the law and the evidence as in your reason and conscience is true and just.

The state's attorney must open the argument. The defendant's attorney may then argue the case. The state's attorney may then reply. No further argument is permitted by either side.

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AUG 18 1983

FREEMAN R. BOSWELL, JR., Clerk

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JDC  
JAMES J. GALLAGHER



INSTRUCTION NO. A

Identification testimony is an expression of belief or impression by the witness. In this case its value depends on the opportunity the witness had to observe whether or not the defendant was the perpetrator and to make a reliable identification later.

In appraising the identification testimony of a witness, you should consider the following:

(1) Are you convinced that the witness had the capacity and an adequate opportunity to observe the offender?

Whether the witness had an adequate opportunity to observe the person at the time will be affected by such matters as how long or short a time was available, how far or close the witness was, how good were lighting conditions, whether the witness had had occasion to see or know the person in the past.

(2) Are you satisfied that the identification made by the witness subsequent to the event was the product of his or her own recollection? You may take into account both the strength of the identification, and the circumstances under which the identification was made.

If the identification by the witness may have been influenced by the circumstances under which the defendant was presented to him for identification, you should scrutinize the identification with great care. You may also consider the length of time that lapsed between the occurrence of the crime and the next opportunity of the witness to see defendant, as a factor bearing on the reliability of the identification.

(3) Finally, you must consider the credibility of each identification witness in the same way as any other witness, consider whether he is truthful, and consider whether he had

REFUSED: 8/16/83 J.J.G.  
JUDGE JAMES J. GALLAGHER

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Deputy

the capacity and opportunity to make a reliable observation on the matter covered in his testimony.

I again emphasize that the burden of proof on the prosecutor extends to every element of the crime charged, and this specifically includes the burden of proving beyond a reasonable doubt the identity of the defendant as being the perpetrator. If after examining the testimony, you have a reasonable doubt as to the accuracy of the identification, you must find in favor of the defendant on this issue.

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FREEMAN R. BOSLEY, JR., Clerk

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Deputy

INSTRUCTION NO. A

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Submitted by Defendant