

FILED IN COURT

12/19/12

PATRICIA A. NOLAND, Clerk

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Deputy

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# COURT'S JURY INSTRUCTIONS

CR-20091310-001

STATE OF ARIZONA

v.

GLEN FRANCIS

Hon. Christopher C. Browning

Division 27

Pima County Superior Court

JURY TRIAL

December 11 – December 19, 2012

## **COURT'S INSTRUCTION NO. 1**

**I AM NOW GOING TO TELL YOU THE RULES YOU SHOULD FOLLOW TO DECIDE THIS CASE. IT IS YOUR DUTY TO FOLLOW THESE INSTRUCTIONS. IF ANYTHING IN THESE INSTRUCTIONS IS DIFFERENT FROM THE INSTRUCTIONS YOU WERE GIVEN AT THE BEGINNING OF THIS CASE, YOU SHOULD DISREGARD THE PRELIMINARY INSTRUCTIONS AND RELY ON THESE FINAL INSTRUCTIONS.**

**IT IS ALSO YOUR DUTY TO DETERMINE THE FACTS. "FACTS" ARE THINGS THAT ACTUALLY HAPPENED. YOU MUST DETERMINE THE FACTS ONLY FROM THE EVIDENCE PRODUCED IN COURT. YOU SHOULD NOT GUESS ABOUT ANY FACT. YOU MUST NOT BE INFLUENCED BY SYMPATHY OR PREJUDICE. YOU MUST NOT BE CONCERNED WITH ANY OPINION THAT YOU FEEL I HAVE ABOUT THE FACTS. YOU ARE THE SOLE JUDGES OF WHAT HAPPENED.**

**YOU MUST CONSIDER ALL OF THESE INSTRUCTIONS. DO NOT PICK OUT ONE INSTRUCTION OR PART OF ONE AND DISREGARD THE OTHERS. HOWEVER, AFTER YOU HAVE DETERMINED THE FACTS, YOU MAY FIND THAT SOME INSTRUCTIONS NO LONGER APPLY.**

**YOU MUST THEN CONSIDER THE INSTRUCTIONS THAT DO APPLY, TOGETHER WITH THE FACTS AS YOU HAVE DETERMINED THEM. DECIDE THIS CASE BY APPLYING THESE INSTRUCTIONS TO THE FACTS WHICH YOU FIND.**

**COURT'S INSTRUCTION NO. 2**

**YOU MUST FIND THE FACTS FROM THE EVIDENCE. THE EVIDENCE WHICH YOU ARE TO CONSIDER CONSISTS OF TESTIMONY OF WITNESSES, THE EXHIBITS AND ANY FACTS STIPULATED TO BY THE ATTORNEYS. AT TIMES I HAVE DECIDED WHETHER TESTIMONY AND EXHIBITS SHOULD HAVE BEEN ADMITTED. WHEN AN OBJECTION TO A QUESTION WAS SUSTAINED, YOU ARE TO DISREGARD THE QUESTION, AND YOU ARE NOT TO GUESS WHAT THE ANSWER TO THE QUESTION MIGHT HAVE BEEN. DO NOT CONCERN YOURSELVES WITH THE REASONS FOR THESE DECISIONS. THE ADMISSION OF EVIDENCE IN COURT IS GOVERNED BY RULES OF LAW.**

**COURT'S INSTRUCTION NO. 3**

**IN THEIR OPENING STATEMENTS AND CLOSING ARGUMENTS, THE LAWYERS TALK TO YOU ABOUT THE LAW AND THE EVIDENCE. WHAT THE LAWYERS SAY IS NOT EVIDENCE, BUT IT MAY HELP YOU TO UNDERSTAND THE LAW AND THE EVIDENCE.**

**COURT'S INSTRUCTION NO. 4**

**THE LAWYERS ARE PERMITTED TO STIPULATE THAT CERTAIN FACTS EXIST. THIS MEANS THAT BOTH SIDES AGREE THOSE FACTS DO EXIST AND ARE PART OF THE EVIDENCE. YOU MAY TREAT A STIPULATION JUST AS ANY OTHER EVIDENCE IN THE CASE. YOU ARE NOT BOUND BY THE STIPULATION AND YOU MAY ACCEPT IT OR REJECT IT IN WHOLE, OR IN PART.**

**COURT'S INSTRUCTION NO. 5**

**EVIDENCE CAN BE EITHER DIRECT OR CIRCUMSTANTIAL. DIRECT EVIDENCE IS THE TESTIMONY OF A WITNESS WHO SAW OR HEARD AN EVENT. CIRCUMSTANTIAL EVIDENCE IS THE PROOF OF A FACT FROM WHICH THE EXISTENCE OF ANOTHER FACT MAY BE INFERRED. YOU MUST DETERMINE THE WEIGHT TO BE GIVEN TO ALL OF THE EVIDENCE WITHOUT REGARD TO WHETHER IT IS DIRECT OR CIRCUMSTANTIAL.**

**COURT'S INSTRUCTION NO. 6**

**IN DECIDING THE FACTS OF THIS CASE, YOU SHOULD CONSIDER WHAT TESTIMONY TO ACCEPT, AND WHAT TO REJECT. YOU MAY ACCEPT EVERYTHING A WITNESS SAYS, OR PART OF IT, OR NONE OF IT.**

**IN EVALUATING TESTIMONY, YOU SHOULD USE THE TEST FOR ACCURACY AND TRUTHFULNESS THAT PEOPLE USE IN DETERMINING MATTERS OF IMPORTANCE IN EVERYDAY LIFE, INCLUDING SUCH FACTORS AS: THE WITNESS' ABILITY TO SEE OR HEAR OR KNOW THE THINGS ABOUT WHICH THE WITNESS TESTIFIES; THE QUALITY OF THE WITNESS' MEMORY; THE WITNESS' MANNER WHILE TESTIFYING; WHETHER THE WITNESS HAS ANY MOTIVE, BIAS, OR PREJUDICE; WHETHER THE WITNESS IS CONTRADICTED BY ANYTHING THE WITNESS HAS PREVIOUSLY SAID OR WRITTEN OR BY OTHER EVIDENCE; AND THE REASONABLENESS OF THE WITNESS' TESTIMONY WHEN CONSIDERED WITH THE OTHER EVIDENCE.**

**CONSIDER ALL OF THE EVIDENCE IN LIGHT OF REASON, COMMON SENSE, AND EXPERIENCE.**

**COURT'S INSTRUCTION NO. 7**

**THE TESTIMONY OF A LAW ENFORCEMENT OFFICER IS NOT ENTITLED TO ANY GREATER OR LESSER WEIGHT OR BELIEVABILITY MERELY BECAUSE OF THE FACT THAT THE PERSON IS A LAW ENFORCEMENT OFFICER. IN OTHER WORDS, YOU ARE TO WEIGH THE TESTIMONY OF A LAW ENFORCEMENT OFFICER JUST AS YOU JUDGE THE TESTIMONY OF ANY OTHER WITNESS.**



**COURT'S INSTRUCTION NO. 8**

**CERTAIN WITNESSES ARE PERMITTED TO TESTIFY AS TO THEIR OPINION ON A SUBJECT UPON WHICH THE WITNESS HAS BECOME AN EXPERT BECAUSE OF EDUCATION, STUDY, EXPERIENCE OR OBSERVATION. YOU SHOULD CONSIDER THE OPINION OF ANY SUCH WITNESS AND SHOULD WEIGH THE REASONS, IF ANY, GIVEN FOR IT. HOWEVER, YOU ARE NOT BOUND BY ANY WITNESSES OPINION. GIVE THE OPINION THE WEIGHT THAT YOU BELIEVE IT DESERVES.**

**COURT'S INSTRUCTION NO. 9**

**THE STATE MUST PROVE GUILT BEYOND A REASONABLE DOUBT  
BASED ON THE EVIDENCE. THE DEFENDANT IS NOT REQUIRED TO  
TESTIFY. THE DECISION ON WHETHER OR NOT TO TESTIFY IS LEFT TO  
THE DEFENDANT ACTING WITH THE ADVICE OF HIS ATTORNEY. YOU  
MUST NOT LET THIS CHOICE AFFECT YOUR DELIBERATIONS IN ANY WAY.**

**COURT'S INSTRUCTION NO. 10**

**THE STATE IS NOT REQUIRED TO CALL AS WITNESSES ALL PERSONS WHO MAY HAVE BEEN PRESENT AT THE TIME OF THE EVENTS DISCLOSED BY THE EVIDENCE, OR WHO MAY APPEAR TO HAVE SOME KNOWLEDGE OF THOSE EVENTS, OR TO PRODUCE ALL OBJECTS OR DOCUMENTS MENTIONED OR SUGGESTED BY THE EVIDENCE.**

**COURT'S INSTRUCTION NO. 11**

**THE STATE HAS CHARGED THE DEFENDANT, GLEN FRANCIS, WITH ONE COUNT OF THE CRIME OF FIRST DEGREE MURDER. YOU MUST NOT THINK THAT THE DEFENDANT IS GUILTY JUST BECAUSE OF THIS CHARGE. THE DEFENDANT HAS PLED "NOT GUILTY" TO THIS CHARGE. THIS PLEA OF "NOT GUILTY" MEANS THAT THE STATE MUST PROVE EVERY PART OF THIS CHARGE BEYOND A REASONABLE DOUBT.**

**COURT'S INSTRUCTION NO. 12**

**A DEFENDANT IN A CRIMINAL CASE IS PRESUMED BY LAW TO BE INNOCENT. THE LAW DOES NOT REQUIRE A DEFENDANT TO PROVE HIS INNOCENCE OR TO PRODUCE ANY EVIDENCE.**

**THE STATE HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. IN CIVIL CASES, IT IS ONLY NECESSARY TO PROVE THAT A FACT IS MORE LIKELY TRUE THAN NOT OR THAT ITS TRUTH IS HIGHLY PROBABLE. IN CRIMINAL CASES SUCH AS THIS, THE STATE'S PROOF MUST BE MORE POWERFUL THAN THAT. IT MUST BE BEYOND 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 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 THE DEFENDANT GUILTY. IF, ON THE OTHER HAND, YOU THINK THERE IS A REAL POSSIBILITY THAT THE DEFENDANT IS NOT GUILTY, YOU MUST GIVE THE DEFENDANT THE BENEFIT OF THE DOUBT AND FIND THE DEFENDANT NOT GUILTY.**

**COURT'S INSTRUCTION NO. 13**

**THE VERDICT MUST REPRESENT THE CONSIDERED JUDGMENT OF EACH JUROR. IN ORDER TO RETURN A VERDICT, IT IS NECESSARY THAT EACH JUROR AGREE THERETO. IN OTHER WORDS, LADIES AND GENTLEMEN, YOUR VERDICT IN THIS CASE, IF YOU RETURN A VERDICT, MUST BE UNANIMOUS.**

**IT IS YOUR DUTY AS JURORS TO CONSULT WITH ONE ANOTHER AND TO DELIBERATE WITH A VIEW TO REACHING A VERDICT IF YOU CAN DO SO WITHOUT VIOLENCE TO YOUR INDIVIDUAL JUDGMENT.**

**EACH OF YOU MUST DECIDE THE CASE FOR YOURSELF, BUT DO SO ONLY AFTER AN IMPARTIAL CONSIDERATION OF THE EVIDENCE WITH THE OTHER JURORS. IN THE COURSE OF YOUR DELIBERATIONS, DO NOT HESITATE TO EXAMINE YOUR OWN VIEWS AND CHANGE YOUR OPINION IF CONVINCED THAT IT IS ERRONEOUS. BUT DO NOT SURRENDER YOUR HONEST BELIEFS AS TO THE WEIGHT OR EFFECT OF THE EVIDENCE SOLELY BECAUSE OF THE OPINION OF THE OTHER JURORS, OR FOR THE MERE PURPOSE OF RETURNING A VERDICT.**

**IN ARRIVING AT A VERDICT, THE SUBJECT OF PENALTY OR PUNISHMENT IS NOT TO BE DISCUSSED OR CONSIDERED BY YOU, AS THAT MATTER IS ONE THAT LIES SOLELY WITH THE COURT AND MUST NOT IN ANY WAY AFFECT YOUR DECISION AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT.**

**COURT'S INSTRUCTION NO. 14**

**THE CRIME OF FIRST DEGREE MURDER REQUIRES PROOF OF THE FOLLOWING THREE THINGS:**

- 1. THE DEFENDANT CAUSED THE DEATH OF ANOTHER PERSON; AND,**
- 2. THE DEFENDANT INTENDED OR KNEW THAT HE WOULD CAUSE THE DEATH OF ANOTHER PERSON; AND**
- 3. THE DEFENDANT ACTED WITH PREMEDITATION.**

**“PREMEDITATION” MEANS THAT THE DEFENDANT INTENDED TO KILL ANOTHER HUMAN BEING, OR KNEW HE WOULD KILL ANOTHER HUMAN BEING, AND THAT AFTER FORMING THAT INTENT OR KNOWLEDGE, REFLECTED ON THE DECISION BEFORE KILLING. IT IS THIS REFLECTION, REGARDLESS OF THE LENGTH OF TIME IN WHICH IT OCCURS, THAT DISTINGUISHES FIRST DEGREE MURDER FROM SECOND DEGREE MURDER. AN ACT IS NOT DONE WITH PREMEDITATION IF IT IS THE INSTANT EFFECT OF A SUDDEN QUARREL OR HEAT OF PASSION.**

**“CAUSE THE DEATH” MEANS THAT THE CRIME PRODUCED THE DEATH AND THAT THE DEATH WOULD NOT HAVE OCCURRED BUT FOR THE COMMISSION OF THE CRIME.**

**COURT'S INSTRUCTION NO. 15**

**“INTENTIONALLY” OR “WITH THE INTENT TO” MEANS THAT A PERSON’S OBJECTIVE IS TO CAUSE THAT RESULT OR TO ENGAGE IN THAT CONDUCT.**



**COURT'S INSTRUCTION NO. 16**

**FLIGHT OF THE ACCUSED, AFTER A CRIME HAS BEEN COMMITTED, DOES NOT CREATE A PRESUMPTION OF GUILT. IT IS, HOWEVER, A CIRCUMSTANCE WHICH MAY TEND TO PROVE CONSCIOUSNESS OF GUILT, AND MAY BE CONSIDERED AND WEIGHED BY YOU IN CONNECTION WITH ALL THE OTHER EVIDENCE.**

**COURT'S INSTRUCTION NO. 17**

**YOU MUST NOT CONSIDER ANY STATEMENTS MADE BY THE DEFENDANT TO A LAW ENFORCEMENT OFFICER UNLESS YOU DETERMINE, BEYOND A REASONABLE DOUBT, THAT THE DEFENDANT MADE THE STATEMENTS VOLUNTARILY.**

**THE DEFENDANT'S STATEMENT IS NOT VOLUNTARY IF IT IS THE RESULT OF ANY VIOLENCE OR THREATS OR ANY PROMISE OF IMMUNITY OF BENEFIT BY A LAW ENFORCEMENT OFFICER.**

**YOU MUST GIVE SUCH WEIGHT TO THE DEFENDANT'S STATEMENT AS YOU FEEL IT DESERVES UNDER ALL THE CIRCUMSTANCES.**

**COURT'S INSTRUCTION NO. 18**

**“DEADLY WEAPON” MEANS ANYTHING DESIGNED FOR LETHAL  
USE.**

**COURT'S INSTRUCTION NO. 19**

**AS TO ANY VERDICT YOU MIGHT REACH, ALL TWELVE OF YOU MUST AGREE ON THAT VERDICT. ALL TWELVE OF YOU MUST AGREE WHETHER THE VERDICT IS "GUILTY" OR "NOT GUILTY." WHEN YOU GO TO THE JURY ROOM YOU WILL CHOOSE A FOREPERSON WHO WILL PRESIDE OVER YOUR DELIBERATIONS AND WHO WILL SIGN ANY VERDICT.**

**YOU WILL BE GIVEN 1 FORM OF VERDICT ON WHICH TO INDICATE YOUR DECISION. IT READS AS FOLLOWS.**