

FILED IN COURT

12/19/12

PATRICIA A. ROLAND, CLERK

S West

Deputy

CR-20091310-001

STATE OF ARIZONA

VS.

GLEN FRANCIS

PRELIMINARY INSTRUCTIONS

**Hon. Christopher C. Browning
Division 27
Pima County Superior Court
December 11, 2012**

COURT'S INSTRUCTION NO. 1

DUTY OF JURORS

NOW THAT YOU HAVE BEEN SWORN, I WILL TELL YOU ABOUT YOUR DUTIES AS JURORS. AT THE END OF THE TRIAL I WILL GIVE YOU MORE DETAILED INSTRUCTIONS THAT WILL APPLY DURING YOUR DELIBERATIONS.

IT IS YOUR DUTY TO DECIDE THE FACTS. YOU MUST DECIDE THE FACTS ONLY FROM THE EVIDENCE PRODUCED IN COURT. YOU MUST NOT SPECULATE OR GUESS ABOUT ANY FACT. YOU MUST NOT BE INFLUENCED BY EITHER SYMPATHY OR PREJUDICE.

AFTER YOU HAVE HEARD ALL OF THE EVIDENCE, YOU WILL DECIDE WHAT THE FACTS ARE. YOU WILL THEN APPLY THE LAW THAT I GIVE YOU TO THE FACTS AND REACH YOUR VERDICT. IN DOING SO YOU MUST FOLLOW THAT LAW WHETHER YOU AGREE WITH IT OR NOT.

YOU MUST NOT TAKE ANYTHING I MAY SAY OR DO DURING THE TRIAL AS INDICATING ANY OPINION I HAVE ABOUT THE FACTS. YOU, AND YOU ALONE, ARE THE SOLE JUDGES OF THE FACTS.

COURT'S INSTRUCTION NO. 2

EVIDENCE

YOU WILL DECIDE WHAT THE FACTS ARE FROM THE EVIDENCE PRESENTED HERE IN COURT. THAT EVIDENCE WILL CONSIST OF THE TESTIMONY OF WITNESSES, ANY DOCUMENTS AND OTHER ITEMS RECEIVED INTO EVIDENCE AS EXHIBITS, AND ANY FACTS STIPULATED TO BY THE PARTIES.

YOU MUST DECIDE THE CREDIBILITY AND WEIGHT TO BE GIVEN TO ANY EVIDENCE PRESENTED IN THE CASE, WHETHER IT BE DIRECT EVIDENCE OR CIRCUMSTANTIAL EVIDENCE.

AT THE END OF THE CASE I WILL GIVE YOU A NUMBER OF INSTRUCTIONS ON THE LAW. YOU MUST THEN CONSIDER THOSE INSTRUCTIONS TOGETHER WITH THE FACTS AS YOU HAVE DETERMINED THEM AND DECIDE THE CASE BY APPLYING THE LAW IN THOSE INSTRUCTIONS TO THE FACTS.

COURT'S INSTRUCTION NO. 3

RULINGS OF THE COURT

THE ADMISSION OF EVIDENCE IN COURT IS GOVERNED BY RULES OF LAW. I WILL APPLY THOSE RULES AND RESOLVE ANY ISSUES THAT ARISE CONCERNING THE ADMISSION OF EVIDENCE.

IF AN OBJECTION TO A QUESTION IS SUSTAINED, YOU MUST DISREGARD THE QUESTION AND YOU MUST NOT GUESS WHAT THE ANSWER TO THE QUESTION MIGHT HAVE BEEN. IF AN EXHIBIT IS OFFERED INTO EVIDENCE AND AN OBJECTION TO IT IS SUSTAINED, YOU WILL NOT RECEIVE THAT EXHIBIT IN EVIDENCE. IF TESTIMONY IS ORDERED STRICKEN, YOU MUST DISREGARD THAT TESTIMONY AND NOT CONSIDER IT FOR ANY PURPOSE.

DO NOT CONCERN YOURSELVES WITH THE REASONS FOR MY RULINGS ON THE ADMISSION OF EVIDENCE. DO NOT REGARD THOSE RULINGS AS ANY INDICATION FROM ME, OF THE CREDIBILITY OR WEIGHT YOU SHOULD GIVE TO ANY EVIDENCE THAT HAS BEEN ADMITTED.

COURT'S INSTRUCTION NO. 4

CREDIBILITY OF WITNESSES

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. 4A

EXPERT WITNESSES

A WITNESS QUALIFIED AS AN EXPERT BY EDUCATION OR EXPERIENCE MAY STATE OPINIONS ON MATTERS IN THAT WITNESS' FIELD OF EXPERTISE, AND MAY ALSO STATE REASONS FOR THOSE OPINIONS.

EXPERT OPINION TESTIMONY SHOULD BE JUDGED JUST AS ANY OTHER TESTIMONY. YOU ARE NOT BOUND BY IT. YOU MAY ACCEPT IT OR REJECT IT, IN WHOLE OR IN PART, AND YOU SHOULD GIVE IT AS MUCH CREDIBILITY AND WEIGHT AS YOU THINK IT DESERVES, CONSIDERING THE WITNESS' QUALIFICATIONS AND EXPERIENCE, THE REASONS GIVEN FOR THE OPINIONS, AND ALL OF THE OTHER EVIDENCE IN THE CASE.

COURT'S INSTRUCTION NO. 5

QUESTIONS BY JURORS

YOU MAY HAVE QUESTIONS OF THE WITNESSES OR ME FROM TIME TO TIME. SHOULD YOU HAVE A QUESTION PLEASE WRITE IT DOWN, BUT DO NOT SIGN IT. PLEASE DO NOT ASK THE QUESTION ALOUD. THE BAILIFF WILL GATHER UP ALL OF THE QUESTIONS AND BRING THEM TO ME BEFORE THE WITNESS LEAVES THE STAND. IF YOU WISH TO POSE A QUESTION TO A PARTICULAR WITNESS, YOU MUST DO SO BEFORE THE WITNESS IS EXCUSED. IT IS GENERALLY NOT POSSIBLE TO RECALL A WITNESS WHO PREVIOUSLY TESTIFIED AND WAS EXCUSED.

IF THE QUESTION IS ONE WHICH THE LAW PERMITS ME TO ASK, THE QUESTION WILL BE ASKED OF, AND ANSWERED BY, THE WITNESS. KEEP IN MIND HOWEVER, THAT THE RULES OF EVIDENCE OR OTHER RULES OF LAW MAY PREVENT SOME OF YOUR QUESTIONS FROM BEING ASKED. I WILL APPLY THE SAME LEGAL STANDARDS TO YOUR QUESTIONS AS I DO TO QUESTIONS ASKED BY THE LAWYERS.

COURT'S INSTRUCTION NO. 6

TAKING NOTES

YOU WILL NOT BE PROVIDED WITH A WRITTEN TRANSCRIPT OF ANY TESTIMONY IN THE TRIAL. YOU HAVE BEEN PROVIDED WITH NOTE PADS AND PENS. IF YOU WISH, YOU MAY TAKE NOTES DURING THE TRIAL. IF YOU DO TAKE NOTES, PLEASE KEEP THEM TO YOURSELF UNTIL YOU AND YOUR FELLOW JURORS GO TO THE JURY ROOM TO DECIDE THE CASE. PLEASE BE ASSURED THAT NO ONE WILL READ ANY OF YOUR NOTES INCLUDING THE ATTORNEYS, THE COURT STAFF OR ANYONE ELSE.

DO NOT BE INFLUENCED BY ANY WRITING I DO AT TIMES. WHAT I WRITE DOWN MAY OR MAY NOT HAVE ANYTHING TO DO WITH THIS TRIAL.

COURT'S INSTRUCTION NO. 7

CONDUCT OF JURORS/ADMONITIONS

THERE ARE A NUMBER OF IMPORTANT RULES GOVERNING YOUR OWN CONDUCT DURING THE TRIAL. THESE ARE CALLED ADMONITIONS.

DO NOT FORM A FINAL OPINION ABOUT ANY FACT OR ABOUT THE OUTCOME OF THE CASE UNTIL YOU HAVE HEARD AND CONSIDERED ALL THE EVIDENCE, THE COURT'S FINAL INSTRUCTIONS ON THE LAW AND THE CLOSING ARGUMENTS. KEEP AN OPEN MIND THROUGHOUT THE TRIAL. FORM YOUR OPINIONS ONLY AFTER YOU HAVE HAD AN OPPORTUNITY TO DISCUSS THE CASE WITH YOUR FELLOW JURORS, IN THE JURY ROOM, AT THE END OF THE TRIAL.

PLEASE DO NOT DISCUSS THE CASE WITH ANYONE ELSE UNTIL AFTER YOU RETURN A VERDICT AND ARE DISCHARGED. ANOTHER PERSON MIGHT TELL YOU INFORMATION THAT THE PARTIES DID NOT DISCOVER AND ARE UNABLE TO EXPLAIN OR REFUTE. TO MINIMIZE THE RISK OF ACCIDENTALLY OVERHEARING SOMETHING ABOUT THE CASE, I ASK THAT YOU CONTINUE TO WEAR THE JURORS' BADGES WHILE IN AND AROUND THE COURTHOUSE. SHOULD ANYONE HAPPEN TO DISCUSS THE CASE IN YOUR PRESENCE, PLEASE REPORT THAT FACT AT ONCE TO ANY MEMBER OF MY STAFF, BUT DO NOT SHARE THE DISCUSSION WITH ANY OTHER JUROR. THE MEMBERS OF MY STAFF ARE THE BAILIFF, THE COURT REPORTER AND THE COURTROOM CLERK.

THOUGH IT IS ENTIRELY NATURAL TO WANT TO TALK OR VISIT WITH PEOPLE WHO YOU WILL SEE DURING THIS TRIAL, PLEASE DO NOT TALK WITH ANY OF THE ATTORNEYS, PARTIES, WITNESSES OR SPECTATORS EITHER IN OR OUT OF THE COURTROOM. THIS RULE IS AN EFFORT TO ASSURE THE PARTIES OF THE ABSOLUTE FAIRNESS THEY ARE ENTITLED TO EXPECT FROM YOU AS JURORS. IF THE ATTORNEYS, PARTIES AND WITNESSES DO NOT GREET YOU OUTSIDE OF COURT, OR AVOID RIDING IN THE SAME ELEVATOR WITH YOU, THEY ARE NOT BEING IMPOLITE. THEY ARE JUST CAREFULLY AVOIDING EVEN AN APPEARANCE OF IMPROPRIETY. DO NOT TALK TO EACH OTHER ABOUT THE CASE OR ABOUT ANYONE WHO HAS ANYTHING TO DO WITH IT UNTIL THE TRIAL IS OVER AND YOU BEGIN TO DELIBERATE.

NEXT, BECAUSE THIS CASE MAY INVOLVE EVENTS THAT OCCURRED AT A PARTICULAR LOCATION, YOU MAY BE TEMPTED TO VISIT THE SCENE. PLEASE DO NOT DO SO. IMPORTANT CHANGES MAY HAVE OCCURRED AT THE LOCATION SINCE THE ORIGINAL EVENT. IN MAKING AN UNGUIDED VISIT WITHOUT THE BENEFIT OF AN EXPLANATION, YOU MIGHT GET AN ERRONEOUS OR PARTIAL IMPRESSION, WHICH MIGHT BE UNFAIR TO ONE SIDE OR THE OTHER.

DO NOT ATTEMPT ANY TESTS, EXPERIMENTS OR OTHER INVESTIGATION ON YOUR OWN. IT WOULD LIKELY BE DIFFICULT OR IMPOSSIBLE TO DUPLICATE CONDITIONS SHOWN BY THE EVIDENCE;

THEREFORE, YOUR RESULTS MIGHT NOT BE RELIABLE OR ACCURATE.

DO NOT DO ANY RESEARCH ABOUT ANY ASPECT OF THE CASE. DO NOT CONSULT BOOKS, THE INTERNET OR ANY OTHER RESOURCE MATERIALS. YOUR DECISION MUST BE BASED SOLELY UPON THE EVIDENCE PRESENTED IN THIS COURTROOM.

ALSO, BECAUSE YOU ARE NOT TO DISCUSS THE CASE WITH ANYONE EXCEPT YOUR FELLOW JURORS AT THE END OF THE TRIAL, PLEASE REFRAIN FROM BLOGGING, TEXTING, TWEETING OR POSTING ANYTHING ABOUT THIS CASE ON THE INTERNET UNTIL AFTER THE CASE IS OVER AND YOU HAVE BEEN DISCHARGED FROM JURY SERVICE.

BEFORE ANY BREAK OR RECESS, I WILL NOT REPEAT THESE ADMONITIONS WORD FOR WORD. ALL OF THESE RULES, HOWEVER, APPLY AT ALL TIMES DURING THE TRIAL – 24 HOURS A DAY – UNTIL YOU RETURN A VERDICT IN OPEN COURT AND ARE DISCHARGED FROM JURY SERVICE.

COURT'S INSTRUCTION NO. 8

REASONABLE DOUBT

THE LAW DOES NOT REQUIRE A DEFENDANT TO PROVE INNOCENCE. 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 HIM OR HER GUILTY. IF, ON THE OTHER HAND, YOU THINK THAT 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. 9

RECESSES AND BREAKS

DURING THE COURSE OF THE TRIAL, THE RECESS OR BREAK PERIODS MAY OCCASIONALLY BE LONGER THAN INDICATED BY THE COURT. IF SUCH A DELAY OCCURS, IT IS NECESSITATED EITHER BY MATTERS RELATED TO THIS TRIAL OR TO THE COURT'S OBLIGATION TO MANAGE OTHER PENDING CASES, WHICH OCCASIONALLY NEED ATTENTION ON AN UNSCHEDULED OR EMERGENCY BASIS.

I APOLOGIZE IN ADVANCE FOR ANY INCONVENIENCE THIS MAY CAUSE.

COURT'S INSTRUCTION NO. 10

BENCH CONFERENCES

SOME OBJECTION OR OTHER LEGAL MATTER MAY REQUIRE THE LAWYERS TO COME UP TO THE BENCH AND BRIEFLY DISCUSS THE MATTER. THIS WILL BE DONE AS QUIETLY AND QUICKLY AS POSSIBLE.

PLEASE AVOID LISTENING TO THESE DISCUSSIONS. YOU SHOULD NOT TRY TO GUESS OR TO SPECULATE ABOUT WHAT IS BEING DISCUSSED OR WHY THE DISCUSSION IS OCCURRING.

COURT'S INSTRUCTION NO. 11

SCHEDULE DURING TRIAL

THE USUAL HOURS OF TRIAL WILL BE FROM 10:00 A.M. TO 4:30 P.M. WE WILL TAKE A SHORT RECESS EVERY MID-AFTERNOON. WE WILL RECESS AT 12:00 NOON AND BEGIN AGAIN AT 1:30 P.M.

AT THE BEGINNING OF THE DAY, PLEASE ASSEMBLE IN THE HALLWAY OUTSIDE THIS COURTROOM. THE BAILIFF WILL GREET YOU THERE AND ESCORT YOU TO THE JURY ROOM FOR THIS DIVISION. PLEASE DO NOT ENTER THE COURTROOM UNTIL YOU ARE CALLED BY THE BAILIFF.

COURT'S INSTRUCTION NO. 12

OUTLINE OF TRIAL

THE TRIAL WILL NOW BEGIN. FIRST, EACH SIDE MAY MAKE AN OPENING STATEMENT. AN OPENING STATEMENT IS NEITHER EVIDENCE NOR ARGUMENT; IT IS AN OUTLINE OF WHAT EACH PARTY THINKS THE EVIDENCE WILL BE. IT IS OFFERED TO HELP YOU UNDERSTAND AND FOLLOW THE EVIDENCE THAT WILL BE PRESENTED DURING THE TRIAL.

NEXT, THE STATE WILL PRESENT WITNESSES AND THE DEFENDANT MAY CROSS-EXAMINE THEM. THEN THE DEFENDANT MAY PRESENT WITNESSES AND THE STATE MAY CROSS-EXAMINE THEM. THERE MAY ALSO BE A REDIRECT EXAMINATION OF A WITNESS BY THE PARTY WHO CALLED THAT WITNESS. GENERALLY, THE PARTY CALLING A WITNESS HAS THE LAST OPPORTUNITY TO QUESTION THAT WITNESS.

AFTER THE EVIDENCE HAS BEEN PRESENTED, I WILL INSTRUCT YOU ON THE LAW THAT YOU ARE TO APPLY IN DECIDING THE CASE. THEN THE ATTORNEYS WILL MAKE THEIR CLOSING ARGUMENTS.

AFTER THAT YOU WILL GO TO THE JURY ROOM TO DELIBERATE AND DECIDE THE CASE. ALL OF THE DOCUMENTS AND THINGS ADMITTED INTO EVIDENCE DURING THE COURSE OF THE TRIAL WILL BE AVAILABLE TO YOU DURING YOUR DELIBERATIONS.

COURT'S INSTRUCTION NO. 13

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 ACTS WITH EITHER THE INTENTION OR THE KNOWLEDGE THAT HE WILL KILL ANOTHER HUMAN BEING, WHEN SUCH INTENTION OR KNOWLEDGE PRECEDES THE KILLING BY ANY LENGTH OF TIME TO PERMIT REFLECTION. PROOF OF ACTUAL REFLECTION IS NOT REQUIRED, BUT 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.