

INSTRUCTIONS AFTER JURY IS SWORN

Ladies and Gentlemen of the jury, you have been selected as the jury in this case. As you know this is a criminal case, and to assist you in better understanding your functions and duties, I will tell you how the case will proceed.

You are the sole judges of the facts. Your determination of the facts is to be based solely upon the evidence submitted during the course of the trial. When I use the term "evidence" I mean the testimony of witnesses who will testify, and any exhibits which may be marked into evidence and which will be taken into the jury room for your review at the end of the case.

The first order of business will be the prosecutor's opening statement. In the opening statement the prosecutor will present the State's contentions and will outline what he/she expects to prove. Following that, the defense counsel, if he/she chooses, will make an opening statement. **[OR, WHERE APPLICABLE: Defense counsel has chosen not to make an opening statement which is his/her right and no adverse inference should be drawn.]**

What is said in an opening statement is not evidence. The evidence will come from the witnesses who will testify and from whatever documents or tangible items that are received in evidence.

During the trial the attorneys may make objections as evidence is offered or they may address motions to me. They have a right and, indeed, a duty to make objections and motions when it seems to them to be proper to do so. I have a duty to rule upon any objections and motions based upon the law.

If you hear me say that an objection is overruled that means I am ruling against the attorney making the objection. If I say the objection is sustained I am ruling in favor of the attorney making the objection. Anything excluded by me is not evidence and must not be considered by you in your deliberations. Sometimes these evidence questions or legal questions will be heard in your presence in open court, other times at a sidebar, or you may be excused and go into the jury room so that we can discuss the issue in open court. I realize that being confined in the jury room for any length of time is not very pleasant, but I ask your indulgence and

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patience. I am sure that you realize that these legal arguments must be heard outside of your presence.

You should not conclude that because I rule one way or another that I have any feelings about the outcome of the case. I do not; but even if I did, you would have to disregard them since you will be the sole judges of the facts.

During the trial from time to time there shall be recesses. During any of those recesses I direct you not to discuss the case among yourselves, and when we recess overnight, you must not discuss the case or the testimony with any members of your family or any other persons or provide an account of your juror service to others, including through any electronic means, such as shared Internet websites.¹ Thus, for example, do not talk face to face or use any electronic device, such as the telephone, cell or smart phone, Blackberry, iPhone, PDA, computer, the Internet, e-mail, any text or instant message service, any Internet chat room, blog or website such as Facebook, MYSpace, YouTube, or Twitter, to communicate to anyone any information about this case. The reason of course is that you should not begin any deliberations until the entire case has been concluded, i.e., until you have heard all of the witnesses, the final arguments of counsel, and my instructions as to the law. It would be improper for any outside influence to intrude upon your thinking. If anyone should attempt to discuss the case with you, you should report the fact to me or my staff immediately.

If you have a cell phone, pager, or any device that is capable of providing Internet access and any device that may be used to record or transmit sound or images, whether video images or still images, you must turn that device off while in the courtroom. Similarly, you must turn off these communication devices and cannot use them for any purpose while in the jury deliberation room. You will be given a telephone number at which you can be contacted during the trial. Unless I otherwise instruct, you may only use these communication devices when you are outside the jury deliberation room during recesses. Please be mindful of these instructions at all times.

During jury selection, you were asked and responded to a series of questions from the court and counsel. If, during the course of trial, you realize that you may have made a

¹ See Assignment Judges memorandum, dated March 17, 2010, "Jurors' Use Of Electronic Devices During Juror Service - Revised Policy."

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misstatement or omission during your responses, or if circumstances arise that could change or alter the answers you gave, do not discuss the matter with your fellow jurors. Rather, you should tell the court officer, who will notify me at once.²

During the trial, you are not to speak to or associate with any of the attorneys, the witnesses or the defendant, _____, nor are they permitted to speak or associate with you. This separation should not be regarded as rudeness but rather as a proper precaution to ensure fairness to both sides. If anyone connected with this case, or any other person approaches you or attempts to influence you in any way, do not discuss it with the other jurors. Simply tell the sheriff's officer and I will be notified immediately.

Your deliberations must be based solely on the testimony and exhibits admitted into evidence, without any outside influence or opinions of relatives or friends. Additionally, do not read any news stories or articles, in print, on the Internet, or in any blog about this case. I do not know if there will be any newspaper or other media coverage of this trial, but you are instructed to completely avoid reading, viewing or listening to any newspaper or media accounts or listening to anyone else discuss them.

Additionally, I must instruct you not to read any newspaper articles, or search for, or research information relating to the case, including any participants in the trial, such as the parties, the witnesses, the lawyers, the judge or court personnel through any means, including electronic means. This strict prohibition against outside research or communication applies not only to printed reference materials, such as dictionaries or encyclopedias, but also to the Internet and any other electronic medium. You are not to seek any additional information on the subject matter of this case, the laws in any way related to this case, or any other factual or legal matter that has any connection to this case. Do not visit or view any place discussed in this case and do not use Internet maps or Google Earth or any other program or device to search for or view any place discussed in the testimony. I am sure that you can understand why this instruction is so important. Information from other sources outside the courtroom is not evidence, is often based upon second or third hand information, is purely hearsay, is not always accurate and is not subject to examination by the attorneys. A juror's improper use of outside technology threatens

² State v. Bianco, 391 N.J. Super. 509, 523 (App. Div. 2007).
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the very fairness of our system of justice and could result in the court having to start the trial all over, wasting the court's, the parties' and your valuable time and resources. In the event that such outside information comes to your attention, it is important that you tell me or a member of my staff so I can determine what further action is necessary to insure the fairness of the trial.

The court and the parties rely upon your good faith and the fact that you have been sworn to comply with the instructions of the court so that both sides may receive a fair trial. Because this instruction is so important, it is my duty to remind you of it at the end of each day's proceedings.

Since you are the sole judges of the facts, you must pay close attention to the testimony. It is important that you carry with you to the jury room not only a clear recollection of what the testimony was, but also a recollection of the manner in which it was given. It will be your duty to pay careful attention to all the testimony. If you are unable to hear any witness, I ask that you indicate this to me by raising your hand so that I may instruct the witness to speak louder and/or more clearly. As jurors you will be required to pass upon all the questions of fact including the credibility or believability of the witnesses.

You are not permitted to visit the scene of the alleged incident, do your own research or otherwise conduct your own investigation. Your verdict must be based solely on the evidence introduced in this courtroom.

Jurors are not permitted to take notes.³ Experience has shown that note taking is distracting. It is better to depend upon the combined recollections of all the jurors than upon notes taken by one or more of them.

At the conclusion of the testimony the attorneys will speak to you once again in summation. At that time they will present to you their final arguments based upon their respective recollections of the evidence. Again, this is not evidence but their recollection as to the evidence. It is your recollection as to the evidence presented that is controlling.

Following summations you will receive your final instructions on the law from me, and you will then retire to consider your verdict. You are not to form or express an opinion on this case but are to keep an open mind until you have heard all the testimony, have heard

³ See R. 1:8-8(b), which authorizes trial judges, at their discretion, to permit jurors to take notes.

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summations, have had the benefit of my instructions as to the applicable law, and have been instructed to begin your deliberations.

It is your duty to weigh the evidence calmly and without bias, passion, prejudice or sympathy, and to decide the issues upon the merits.

You, as jurors, should find your facts from the evidence adduced during the trial. Evidence may be either direct or circumstantial. Direct evidence means evidence that directly proves a fact, without an inference, and which in itself, if true, conclusively establishes that fact. On the other hand, circumstantial evidence means evidence that proves a fact from which an inference of the existence of another fact may be drawn.

An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts established by the evidence.

It is not necessary that facts be proved by direct evidence. They may be proved by direct evidence or circumstantial evidence or by a combination of direct and circumstantial evidence. Both direct and circumstantial evidence are acceptable as a means of proof. Indeed, in many cases, circumstantial evidence may be more certain, satisfying and persuasive than direct evidence.

In any event, both circumstantial and direct evidence should be scrutinized and evaluated carefully. A conviction may be based on direct evidence alone, circumstantial evidence alone or a combination of direct evidence and circumstantial evidence, provided, of course, that it convinces you of a defendant's guilt beyond a reasonable doubt.

Conversely, if direct or circumstantial evidence gives rise to a reasonable doubt in your minds as to the defendant's guilt then the defendant must be found not guilty.

A simple illustration may be helpful. The following is one set of possible illustrations:

Optional Illustrations:

The problem is proving that it snowed during the night:

- (a) Direct Evidence: Testimony indicating that the witness observed snow falling during the night.
- (b) Circumstantial Evidence: Testimony indicating that there was no snow on

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the ground before the witness went to sleep, and that when he or she arose in the morning, it was not snowing, but the ground was snow-covered.⁴

The former directly goes to prove that fact that snow fell during the night; while the latter establishes facts from which the inference that it snowed during the night can be drawn.

As the judges of the facts you are to determine the credibility of the witnesses, and, in determining whether a witness is worthy of belief and therefore credible, you may take into consideration: the appearance and demeanor of the witness; the manner in which he or she may testify; the witness' interest in the outcome of the trial, if any; his or her means of obtaining knowledge of the facts; the witness' power of discernment meaning their judgment, their understanding; his or her ability to reason, observe, recollect and relate; the possible bias (if any) in favor of the side for whom the witness testifies; the extent to which, if at all, each witness is either corroborated or contradicted, supported or discredited by other evidence; whether the witness testified with an intent to deceive you; the reasonableness or unreasonableness of the testimony the witness has given; whether the witness made any inconsistent or contradictory statements; and any and all other matters in the evidence which serve to support or discredit his or her testimony to you.

During your deliberations, you may ask: what is more reasonable; the more probable or the more logical version?

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons witnessing an incident may see or hear it differently; an innocent misrecollection, like failure of recollection, is not an uncommon experience in weighing the effect of a discrepancy, consider whether it pertains to a matter of importance or an unimportant detail, and, whether the discrepancy results from innocent error or willful falsehood.

⁴ For cases dealing with circumstantial evidence, see: State v. Corby, 28 N.J. 106 (1958); State v. Fiorello, 36 N.J. 80, 87-88 (1961), cert. denied, 368 U.S. 967 (1962); State v. Ray, 43 N.J. 19, 30-31 (1964); State v. Mills, 51 N.J. 277, 287 (1968), cert. denied, 393 U.S. 186 (1969); State v. Franklin, 52 N.J. 386, 406 (1968); State v. Mayberry, 52 N.J. 413, 436-37 (1968), cert. denied, 393 U.S. 1043, (1969); State v. Graziani, 60 N.J. Super. 1, 13-14 (App. Div. 1959), aff'd o.b., 31 N.J. 538 (1960), cert. denied, 363 U.S. 830 (1960); State v. Hubbs, 70 N.J. Super. 322, 328-29 (App. Div. 1961); State v. Papitsas, 80 N.J. Super. 420, 424 (App. Div. 1963).

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A witness or witnesses may testify in this case with the assistance of a certified court interpreter. Even if you understand the language spoken by the witness, you must accept the interpretation of the testimony and you must not provide any translation of your own to the jurors. Every juror is bound by the translation provided by the interpreter, whether or not the juror agrees or disagrees with the interpretation, because every juror must consider the same evidence during deliberations.

[In appropriate cases charge "Testimony of Expert"]

(_____) stands before you on an indictment found by the Grand Jury charging (him/her) with committing the crime(s) of _____.

The indictment is not evidence of the defendant's guilt on the charge(s). An indictment is a step in the procedure to bring the matter before the court and jury for the jury's ultimate determination as to whether the defendant is guilty or not guilty on the charge(s) stated in it.

The defendant has pleaded not guilty to the charge(s).

The defendant on trial is presumed to be innocent and unless each and every essential element of the offense(s) charged is (are) proved beyond a reasonable doubt, the defendant must be found not guilty of that charge.

The burden of proving each element of the charge(s) beyond a reasonable doubt rests upon the State and that burden never shifts to the defendant. It is not the obligation or the duty of the defendant in a criminal case to prove his/her innocence or offer any proof relating to his/her innocence.

The prosecution must prove its case by more than a mere preponderance of the evidence, yet not necessarily to an absolute certainty.

The State has the burden of proving the defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases, where you were told that it is necessary to prove only that a fact is more likely true than not true. In criminal cases, the State's proof must be more powerful than that. It must be beyond a reasonable doubt.

A reasonable doubt is an honest and reasonable uncertainty in your minds about the guilt of the defendant after you have given full and impartial consideration to all of the evidence. A

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reasonable doubt may arise from the evidence itself or from a lack of evidence. It is a doubt that a reasonable person hearing the same evidence would have.

Proof beyond a reasonable doubt is proof, for example, that leaves you firmly convinced of the defendant's guilt. In this world, we know very few things with absolute certainty. 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/her guilty. If, on the other hand, you are not firmly convinced of defendant's guilt, you must give defendant the benefit of the doubt and find him/her not guilty.

You will note that a jury of 14 has been drawn in this case. At the conclusion of all of the evidence and the charge of the court, there will be a random selection in which 2 jurors will be selected to act as alternates. The 12 remaining jurors will then deliberate and return a verdict. At this point we don't know who the alternates will be, and whether or not their services will be utilized. Thus, I direct that all jurors should pay equal attention to the evidence as it is presented, and to the court's rulings which are applicable to the case.

(OPENINGS)