

MAY 08 2023

INSTRUCTION NO. 1

DIVISION 15

Members of the jury, the evidence in this case has been completed. ~~In a moment, I will~~ ^{DATE PROMISED, MAY 8, 2023}

read to you jury instructions that contain the rules of law you must apply to reach your verdict.

You will have copies of what I read to take with you to the jury room. But first, I want to mention a few things you need to keep in mind when you are discussing this case in the jury room.

Until you have returned a verdict, you must not do any research about this case or this kind of case using any source, including dictionaries, reference materials, the internet or any other electronic means. You must not communicate in any way with anyone else about this case or this kind of case until you have returned a verdict in court. This includes your family and friends. If you have a cell phone or other electronic device, you must keep it turned off during jury deliberations.

It is my job to decide what rules of law apply to the case. While the attorneys may comment on some of these rules, you must follow the instructions I give you. Even if you disagree with or do not understand the reasons for some of the rules of law, you must follow them. No single instruction describes all the law which must be applied; the instructions must be considered together as a whole.

During the trial, you received all of the evidence that you may properly consider in deciding the case. Your decision must be made by applying the rules of law that I give you to the evidence presented at trial. Remember, you must not be influenced by sympathy, bias or prejudice in reaching your decision.

You should not allow bias or any kind of prejudice based upon gender to influence your decision.

If you decide that the prosecution has proved beyond a reasonable doubt that the defendant is guilty, it will be my job to decide what the punishment will be. In making your decision, you must not consider punishment at all. At times during the trial, attorneys made objections. Do not draw any conclusions from the objections or from my rulings on the objections. These only related to legal questions I had to decide and should not influence your thinking. If I told you not to consider a particular statement that was made during the trial, you must not consider it in your deliberations.

Finally, you should consider all the evidence in light of your experience in life.

INSTRUCTION NO. 2

The defendant is charged with committing the crimes of Murder in the First Degree (after deliberation), Murder in the First Degree (child under twelve; position of trust), Tampering with a Deceased Human Body, and Tampering with Physical Evidence in El Paso County, Colorado, on or about January 27, 2020. The defendant has pled not guilty by reason of insanity.

INSTRUCTION NO. 3

The charges against the defendant are not evidence. The charges against the defendant are just accusations. The fact that the defendant has been accused is not evidence that the defendant committed any crime.

INSTRUCTION NO. 4

Every person charged with a crime is presumed innocent. This presumption of innocence remains with the defendant throughout the trial and should be given effect by you unless, after considering all of the evidence, you are then convinced that the defendant is guilty beyond a reasonable doubt.

The burden of proof is upon the prosecution to prove to the satisfaction of the jury beyond a reasonable doubt the existence of all of the elements necessary to constitute the crime charged.

Reasonable doubt means a doubt based upon reason and common sense which arises from a fair and rational consideration of all of the evidence, or the lack of evidence, in the case. It is a doubt which is not a vague, speculative or imaginary doubt, but such a doubt as would cause reasonable people to hesitate to act in matters of importance to themselves.

If you find from the evidence that each and every element of a crime has been proven beyond a reasonable doubt, you should find the defendant guilty of that crime. If you find from the evidence that the prosecution has failed to prove any one or more of the elements of a crime beyond a reasonable doubt, you should find the defendant not guilty of that crime.

INSTRUCTION NO. 5

The number of witnesses testifying for or against a certain fact does not, by itself, prove or disprove that fact.

INSTRUCTION NO. 6

You are the sole judges of the credibility of each witness and the weight to be given to the witness's testimony. You should carefully consider all of the testimony given and the circumstances under which each witness has testified.

For each witness, consider that person's knowledge, motive, state of mind, demeanor, and manner while testifying. Consider the witness's ability to observe, the strength of that person's memory, and how that person obtained his or her knowledge. Consider any relationship the witness may have to either side of the case, and how each witness might be affected by the verdict. Consider how the testimony of the witness is supported or contradicted by other evidence in the case. You should consider all facts and circumstances shown by the evidence when you evaluate each witness's testimony.

You may believe all of the testimony of a witness, part of it, or none of it.

INSTRUCTION NO. 7

A witness qualified as an expert by education, training or experience may state opinions. You are not bound by the testimony of witnesses who testified as experts; the credibility of an expert's testimony is to be considered as that of any other witness. You may believe all of an expert witness's testimony, part of it, or none of it.

The weight you give the testimony is entirely your decision.

INSTRUCTION NO. 8

Every defendant has a constitutional right not to testify. The decision not to testify cannot be used as an inference of guilt and cannot prejudice the defendant. It is not evidence, does not prove anything, and must not be considered for any purpose.

INSTRUCTION NO. 9

The Court has taken judicial notice of a certain fact. You may or may not accept that fact as true. It is entirely your decision to determine what weight, if any, shall be given to the evidence.

INSTRUCTION NO. 9A

In response to the COVID19 pandemic, the El Paso County jail was accepting WebEx meetings on March 20, 2020. The Defendant's attorney had a WebEx meeting with the defendant on that date around noon. Later that day, Dr. Mohr had a conversation with the Defendant about Gannon being found in Florida.

INSTRUCTION NO. 10

A fact may be proven by either direct or circumstantial evidence. Under the law, both are acceptable ways to prove something. Neither is necessarily more reliable than the other.

Direct evidence is based on first-hand observation of the fact in question. For example, a witness's testimony that she looked out a window and saw snow falling might be offered as direct evidence that it had snowed.

Circumstantial evidence is indirect. It is based on observations of related facts that may lead you to reach a conclusion about the fact in question. For example, a witness's testimony that she looked out a window and saw snow covering the ground might be offered as circumstantial evidence that it had snowed.

INSTRUCTION NO. 11

Members of the jury, you may discuss this case only when you are all present and you may only deliberate in the jury room. No juror should attempt to discuss this case with other jurors or anyone else at any other time except when all jurors are in the jury room.

INSTRUCTION NO. 12

Once you begin your deliberations, if you have a question, your foreperson should write it on a piece of paper, sign it and give it to the bailiff, who will bring it to me.

The Court will then determine the appropriate way to answer the question.

However, there may be some questions that, under the law, the Court is not permitted to answer. Please do not speculate about what the answer to your question might have been or why the Court is not able to answer a particular question.

Finally, please be sure to keep the original question and response. Do not destroy them as they are part of the official record in this case, and must be returned to me when you return the instructions and verdict forms at the end of the case.

INSTRUCTION NO. 13

During this trial you were permitted to submit written questions to witnesses. If a particular question was not asked, do not guess why the question was not asked or what the answer might have been. My decision not to ask a question submitted by a juror is not a reflection on the person asking it, and you should not attach any significance to the failure to ask a question. By making legal rulings on the admissibility of questions, I did not intend to suggest or express any opinion about the question. My decision whether or not to allow a question is based on the applicable rules of evidence and other rules of law, and not on the facts of this particular case. It is my responsibility to assure that all parties receive a fair trial according to the law and the rules of evidence.

The fact that certain questions were not asked must not affect your consideration of the evidence in any way. Do not give greater weight to questions, or answers to questions, that are submitted by yourself or your fellow jurors. In making your decision, you must consider all of the evidence that has been presented.

INSTRUCTION NO. 14

In this case a separate offense is charged against the defendant in each count of the information. Each count charges a separate and distinct offense and the evidence and the law applicable to each count should be considered separately, uninfluenced by your decision as to any other count. The fact that you may find the defendant guilty or not guilty of one of the offenses charged, should not control your verdict as to any other offense charged against the defendant.

The defendant may be found guilty or not guilty of any one or all of the offenses charged.

INSTRUCTION NO. 15

A crime is committed when the defendant has committed a voluntary act prohibited by law, together with a culpable state of mind.

“Voluntary act” means an act performed consciously as a result of effort or determination.

Proof of the voluntary act alone is insufficient to prove that the defendant has the required state of mind.

The culpable state of mind is as much an element of the crime as the act itself and must be proven beyond a reasonable doubt, either by direct or circumstantial evidence.

In this case, the applicable states of mind are explained below:

The term “after deliberation” means not only intentionally, but also that the decision to commit the act has been made after the exercise of reflection and judgment concerning the act. An act committed after deliberation is never one which has been committed in a hasty or impulsive manner.

A person acts “intentionally” or “with intent” when her conscious objective is to cause the specific result proscribed by the statute defining the offense. It is immaterial whether or not the result actually occurred.

A person acts “knowingly” or “willfully” with respect to conduct or to a circumstance described by a statute defining an offense when she is aware that her conduct is of such nature or that such a circumstance exists. A person acts “knowingly” or “willfully”, with respect to a result of her conduct, when she is aware that her conduct is practically certain to cause the result.

INSTRUCTION NO. 16

The elements of the crime of Murder in the First Degree (after deliberation) are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. after deliberation, and
4. with the intent,
5. to cause the death of a person other than herself,
6. caused the death of that person or of another person.
7. And that the defendant's conduct was not legally authorized by the affirmative defense in instruction 21.

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of Murder in the First Degree (after deliberation).

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of Murder in the First Degree (after deliberation).

INSTRUCTION NO. 17

The elements of the crime of Murder in the First Degree (child under twelve; position of trust) are:

1. That the defendant,
2. in the State of Colorado at or about the date and place charged,
3. knowingly,
4. caused the death of a child who had not yet attained twelve years of age, and
5. the defendant was in a position of trust with respect to the child.
6. And that the defendant's conduct was not legally authorized by the affirmative defense in Instruction 21.

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of Murder in the First Degree (child under twelve; position of trust.)

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of Murder in the First Degree (child under twelve; position of trust.)

INSTRUCTION NO. 18

The elements of the crime of Tampering with a Deceased Human Body are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. believed that an official proceeding was pending, in progress, or about to be instituted, and
4. acting without legal right or authority,
5. willfully,
6. destroyed, mutilated, concealed, removed, or altered a human body, part of a human body, or human remains,
7. with intent,
8. to impair its or their appearance or availability in the official proceedings.
9. And that the defendant's conduct was not legally authorized by the affirmative defense in Instruction 21.

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of Tampering with a Deceased Human Body.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of Tampering with a Deceased Human Body.

INSTRUCTION NO. 19

The elements of the crime of Tampering with Physical Evidence are:

1. That the defendant,
2. in the State of Colorado, at or about the date and place charged,
3. believed that an official proceeding was pending, in progress, or about to be instituted, and
4. acting without legal right or authority,
5. destroyed, mutilated, concealed, removed, or altered physical evidence,
6. with intent to impair its verity or availability in the pending or prospective official proceeding.
7. And that the defendant's conduct was not legally authorized by the affirmative defense in Instruction 21.

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find the defendant guilty of tampering with physical evidence.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the elements beyond a reasonable doubt, you should find the defendant not guilty of tampering with physical evidence.

INSTRUCTION NO. 20

In this case certain words or phrases have a particular meaning. The following are the definitions of those words and phrases. Accordingly, you are to use the following definitions where these words and phrases appear in instructions that define crimes, defenses, special rules, and verdict questions.

"CAUSE" means that act or failure to act which in natural and probable sequence produced the claimed injury. It is a cause without which the claimed injury would not have been incurred.

"HOMICIDE" means the killing of a person by another.

"OFFICIAL PROCEEDING" means a proceeding heard before any legislative, judicial, administrative, or other governmental agency, or official authorized to hear evidence under oath, including any magistrate, hearing examiner, commissioner, notary, or other person taking testimony or depositions in any such proceedings.

"PERSON" when referring to the victim of a homicide, means a human being who had been born and was alive at the time of the homicidal act.

"PHYSICAL EVIDENCE" includes any article, object, document, record, or other thing of physical substance. "PHYSICAL EVIDENCE" does not include a human body, part of a human body, or human remains.

One in a "POSITION OF TRUST" includes, but is not limited to, any person who is a parent or acting in the place of a parent and charged with any of a parent's rights, duties, or responsibilities concerning a child, including a guardian or someone otherwise responsible for the general supervision of a child's welfare, or a person who is charged with any duty or responsibility for the health, education, welfare, or supervision of a child, including foster care, child care, family care, or institutional care, either independently or through another, no matter how brief, at the time of an unlawful act.

INSTRUCTION NO. 21

The evidence in this case has raised the defense of insanity, as a defense to the crimes of Murder in the First Degree (after deliberation), Murder in the First Degree (child under twelve; position of trust), Tampering with a Deceased Human Body, and Tampering with Physical Evidence.

The defendant was insane at the time of the commission of the acts if:

1. she was so diseased or defective in mind at the time of the commission of the act as to be incapable of distinguishing right from wrong with respect to that act; or
2. she suffered from a condition of mind caused by a mental disease or defect that prevented her from forming a culpable mental state that is an essential element of a crime charged.

But care should be taken not to confuse mental disease or defect with moral obliquity, mental depravity, or passion growing out of anger, revenge, hatred, or other motives and kindred evil conditions because, when an act is induced by any of these causes, the person is accountable to the law.

In addition, “diseased or defective in mind” does not refer to an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

Similarly, “mental disease or defect” means only those severely abnormal mental conditions that grossly and demonstrably impair a person’s perception or understanding of reality and that are not attributable to the voluntary ingestion of alcohol or any other psychoactive substance. “Mental disease or defect” does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

The law presumes everyone to be sane. However, after some evidence of insanity is introduced, the burden of proof is upon the People to prove to the satisfaction of the jury beyond a reasonable doubt that the defendant was sane at the time of the commission of the crimes charged.

In order to meet this burden of proof, the prosecution must disprove, beyond a reasonable doubt, both of the above numbered conditions.

After considering all the evidence, if you decide the prosecution has failed to meet this burden of proof, then the prosecution has failed to prove that the defendant was sane at the time of the commission of the acts, which is an essential element of Murder in the First Degree (after deliberation), Murder in the First Degree (child under twelve; position of trust), Tampering with a Deceased Human Body, and Tampering with Physical Evidence. In that event, you must find the defendant not guilty and have the foreperson sign the designated section of Part A of the verdict forms to indicate your verdicts.

After considering all the evidence, if you decide the prosecution has met this burden of proof, then the prosecution has proved that the defendant was not insane at the time of the commission of the acts. In that event, your verdicts concerning the charges of Murder in the First Degree (after deliberation), Murder in the First Degree (child under twelve; position of trust), Tampering with a Deceased Human Body, and Tampering with Physical Evidence must depend upon your determination whether the prosecution has met its burden of proof with respect to the remaining elements of those offenses.

INSTRUCTION NO. 22

Concerning the affirmative defense on insanity, certain words or phrases have a particular meaning.

“DISEASED OR DEFECTIVE IN MIND” does not refer to an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

“MENTAL DISEASE OR DEFECT” means only those severely abnormal mental conditions which grossly and demonstrably impair a person’s perception or understanding of reality and which are not attributable to the voluntary ingestion of alcohol or any other psychopathic substance; except that it does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

“MORAL OBLIQUITY” refers to an act committed by a person who is capable of distinguishing moral right from moral wrong, but nevertheless acts out a perverse and culpable rejection of prevailing moral standards. “MORAL OBLIQUITY” does not include an act committed by a person in a state of mental illness that renders the person incapable of distinguishing right from wrong with respect to the act.

“INCAPABLE OF DISTINGUISHING RIGHT FROM WRONG” refers to cognitive inability, due to a mental disease or defect, to distinguish right from wrong as measured by a societal standard or morality, even though the person may be aware that the conduct in question is criminal. The phrase “INCAPABLE OF DISTINGUISHING RIGHT FROM WRONG” does not refer to a purely personal and subjective standard of morality.

INSTRUCTION NO. 23

If you found the defendant guilty of one or more of the following charges of Murder in the First Degree (after deliberation), Murder in the First Degree (child under twelve; position of trust), Tampering with a Deceased Human Body, and Tampering with Physical Evidence, you should disregard the remainder of this instruction and sign Section A of the verdict form for that charge to indicate your verdict of guilty.

If, however, you found the defendant not guilty of one or more of the following charges of Murder in the First Degree (after deliberation), Murder in the First Degree (child under twelve; position of trust), Tampering with a Deceased Human Body, and Tampering with Physical Evidence, you should sign Section A of the verdict form to indicate your verdict of not guilty, and you should also answer the following verdict question in Section B of the verdict form:

Did you find the defendant not guilty solely based on the defense of insanity? (Answer “Yes” or “No”)

The Court reminds you that the prosecution has the burden to prove beyond a reasonable doubt each element of the crime charged, including that the defendant was not insane at the time of the commission of the act.

If you decided that the only element of the crime charged that the prosecution failed to prove beyond a reasonable doubt is that the defendant was sane at the time of the commission of the act, you should mark “Yes” in the appropriate place in Section B of the verdict form, and have the foreperson sign the designated line in that section of the verdict form. If you decided that the prosecution failed to prove any other element beyond a reasonable doubt, you should

mark "No" in the appropriate place in Section B of the verdict form, and have the foreperson sign the designated line in that section of the verdict form.

INSTRUCTION NO. 24

In any trial or hearing in which the mental condition of the defendant is an issue, witnesses not specially trained in psychiatry or psychology may testify as to their observation of the defendant's actions and conduct, and as to conversations which they have had with her bearing upon her mental condition and they shall be permitted to give their opinions or conclusions concerning the mental condition of the defendant.

INSTRUCTION NO. 25

This is an informational instruction and must have no persuasive bearing on the verdicts you arrive at under the evidence.

If a defendant is found not guilty by reason of insanity, it is the court's duty to commit the defendant to the Department of Human Services until such time as the court determines that the defendant no longer requires hospitalization because she no longer suffers from a mental disease or defect which is likely to cause her to be dangerous to herself, to others, or to the community in the reasonably foreseeable future.

If a defendant is found not guilty by reason of insanity, she will never again be tried on the merits of the criminal charges filed against her.

INSTRUCTION NO. 26

The question of the defendant's sanity or insanity has reference to her mental condition at the time of the alleged acts. The condition of the defendant's mind, previous to the act charged, and since that time, may be considered only to aid you in determining her sanity or insanity at the time of the acts charged.

INSTRUCTION NO. 27

The bailiff will now escort you to the jury room, where you will select one of your members to be your foreperson. Your foreperson will preside over your deliberations and shall sign any verdict form and verdict question form that you may agree on, according to the rules that I am about to explain.

The verdict for each charge must represent the considered judgment of each juror, and it must be unanimous. In other words, all of you must agree to all parts of it. This requirement also applies to any determinations that you make in response to verdict questions which you conclude should be answered.

Only one verdict shall be returned signed for each count. The verdict forms, verdict question forms, and these instructions shall remain in the possession of your foreperson until I ask for them in open court. Upon reaching a verdict and, if required by your verdicts, answering any verdict questions, you will inform the bailiff, who in turn will notify me, and you will remain in the jury room until I call you into the courtroom.

You will be provided with 4 verdict forms. You also will be provided with 4 verdict question forms with directions that explain under what circumstances you should complete those forms.

When you have unanimously agreed upon your verdicts you will select the option on each form which reflects your verdict, and the foreperson will sign the verdict forms as I have stated. Similarly, if you conclude that the verdict questions should be answered, you will select the option on each verdict question form which reflects your unanimous decision, and the foreperson will sign each verdict question form as I have stated.

I will now read to you the verdict and verdict questions forms. You must not draw any inferences based on the order in which I read them. The verdict and verdict question forms you will receive read as follows: