

State v. _____

Ind. No. _____

GENERAL INFORMATION

Ladies and Gentlemen of the Jury, the evidence in this case has been presented and the attorneys have completed their summations. We now arrive at that time when you, as jurors, are to perform your final function in this case.

At the outset, let me express my thanks and appreciation to you for your attention to this case. I would like to commend counsel for the professional manner in which they have presented their respective cases and for their courtesy to the court and jury during the course of this trial.

Before you retire to deliberate and reach your verdict, it is my obligation to instruct you as to the principles of law applicable to this case. You shall consider my instructions in their entirety and not pick out any particular instruction and overemphasize it.

Generally speaking, these instructions consist of four parts. The first part deals with the general principles of law that apply to a criminal case. The second part describes the evidence that you may consider in your deliberations. The third part is about the portions of the Criminal Code of New Jersey that you must apply to the facts you find in this case to determine whether the State has proven beyond a reasonable doubt that the defendant violated a specific criminal statute. Finally, the fourth part of the instructions tells you how to go about conducting your deliberations.

You must accept and apply this law for this case as I give it to you in this charge. Any ideas you have of what the law is or what the law should be or any statements by the attorneys as to what the law may be, must be disregarded by you, if they are in conflict with my charge.

NATURE OF INDICTMENT

Now, beginning with the general principles of law that apply to a criminal case, the defendant(s) stand(s) before you on an indictment returned by the grand jury charging him/her with **[Insert Counts of Indictment for the jury to consider]:**

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.

CRIMINAL FINAL CHARGE

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

PRESUMPTION OF INNOCENCE, BURDEN OF PROOF, REASONABLE DOUBT

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

The burden of proving each element of a charge beyond a reasonable doubt rests upon the State and that burden never shifts to the defendant. The defendant in a criminal case has no obligation or duty 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 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.

FUNCTION OF THE COURT

The function of the judge is separate and distinct from the function of the jury. It is my responsibility to determine all questions of law arising during trial and to instruct the jury as to the law which applies in this case. You must accept the law as given to you by me and apply it to the facts as you find them to be.

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During the course of the trial, I was required to make certain rulings on the admissibility of the evidence either in or outside of your presence. These rulings involved questions of law. The comments of the attorneys on these matters were not evidence. In ruling, I have decided questions of law and, whatever the ruling may have been in any particular instance, you should understand that it was not an expression or opinion by me on the merits of the case. Neither should my other rulings on any other aspect of the trial be taken as favoring one side or the other. Each matter was decided on its own merits.

I may have sustained an objection(s) to some questions asked by counsel which may have contained statements of certain facts. The mere fact that an attorney asks a question and inserts facts or comments or opinions in that question in no way proves the existence of those facts. You will only consider such facts which in your judgment have been proven by the testimony of witnesses or from exhibits admitted into evidence by the court.

JUDGE'S QUESTIONING

The fact that I may have asked questions of a witness in the case must not influence you in any way in your deliberations. The fact that I asked such questions does not indicate that I hold any opinion one way or the other as to the testimony given by the witness. Any remarks made by me to counsel or by counsel to me or between counsel, are not evidence and should not affect or play any part in your deliberations.

FUNCTION OF THE JURY

As I instructed you when we started the case, I explained to you that you are the judges of the facts and, as judges of the facts, you are to determine the credibility of the various witnesses as well as the weight to be attached to their testimony. You and you alone are the sole and exclusive judges of the evidence, of the credibility of the witnesses and the weight to be attached to the testimony of each witness.

Regardless of what counsel said or I may have said recalling the evidence in this case, it is your recollection of the evidence that should guide you as judges of the facts. Arguments, statements, remarks, openings and summations of counsel are not evidence and must not be treated as evidence. Although the attorneys may point out what they think important in this case, you must rely solely upon your understanding and recollection of the evidence that was admitted during the

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trial. Whether or not the defendant has been proven guilty beyond a reasonable doubt is for you to determine based on all the evidence presented during the trial. Any comments by counsel are not controlling.

It is your sworn duty to arrive at a just conclusion after considering all the evidence which was presented during the course of the trial.

Now I will move on to the second part of the instructions and discuss the evidence that you may consider in judging the facts of the case. When I use the term “evidence” I mean the testimony you have heard and seen from this witness box, any stipulations and the exhibits that have been admitted into evidence. Any exhibit that has not been admitted into evidence cannot be given to you in the jury room even though it may have been marked for identification. Only those items admitted into evidence can be given to you.

Any testimony that I may have had occasion to strike is not evidence and shall not enter in your final deliberations. It must be disregarded by you. This means that even though you may remember the testimony you are not to use it in your discussions or deliberations. Further, if I gave a limiting instruction as to how to use certain evidence, that evidence must be considered by you for that purpose only. You cannot use it for any other purpose.

As jurors, it is your duty to weigh the evidence calmly and without passion, prejudice or sympathy. Any influence caused by these emotions has the potential to deprive both the State and the defendant(s) of what you promised them - a fair and impartial trial by fair and impartial jurors. Also, speculation, conjecture and other forms of guessing play no role in the performance of your duty.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

As I instructed you at the beginning of the case, 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.¹

¹ The court may make reference to the example given to the jury previously in the “Instructions After Jury is Sworn” model charge.

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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. Whether or not inferences should be drawn is for you to decide using your own common sense, knowledge and every day experience. Ask yourselves is it probable, logical and reasonable.

It is not necessary that all the facts be proven by direct evidence. They may be proven by direct evidence, circumstantial evidence or by a combination of direct and circumstantial evidence. All are acceptable as a means of proof. In many cases, circumstantial evidence may be more certain, satisfying and persuasive than direct evidence.

However, direct and circumstantial evidence should be scrutinized and evaluated carefully. A verdict of guilty 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. The reverse is also true, a defendant may be found not guilty by reason of direct evidence, circumstantial evidence, a combination of the two or a lack of evidence if it raises in your mind a reasonable doubt as to the defendant's guilt.

CREDIBILITY OF WITNESSES

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 have testified;
- 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 his or her judgment - 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 testified;
- 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 statement;
- and any and all other matters in the evidence which serve to support or discredit his

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or her testimony.

Through this analysis, as the judges of the facts, you weigh the testimony of each witness and then determine the weight to give to it. Through that process you may accept all of it, a portion of it or none of it.

(CHARGE, IF APPLICABLE MODEL CHARGE(S) (ATTACHED) ON: ALIBI, DEFENDANT'S ELECTION NOT TO TESTIFY, CREDIBILITY-PRIOR CONVICTION OF A DEFENDANT, CREDIBILITY- PRIOR CONVICTION OF A WITNESS, CREDIBILITY OF WITNESS-PRIOR ADJUDICATION OF DELINQUENCY, EXPERT TESTIMONY, FALSE IN ONE-FALSE IN ALL, TESTIMONY OF CHARACTER WITNESS, FINGERPRINTS, FLIGHT, IDENTIFICATION, IDENTITY-POLICE PHOTOS, PRIOR CONTRADICTORY STATEMENTS OF WITNESSES, STATEMENT BY DEFENDANT (WHERE ADMISSIBLE FOR CREDIBILITY PURPOSES ONLY), STATEMENTS OF DEFENDANT, WITNESS IMMUNITY, WITNESS - TESTIFYING WHILE WEARING RESTRAINTS, WITNESS-TESTIFYING IN JAIL GARB OR PRISON GARB, and DEFENDANT-TESTIFYING IN JAIL GARB OR PRISON GARB).²

² This section should be deleted from the final draft of the charge to be given to the jury.

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Now, I will instruct you on the third part of the instructions on the portions of the Criminal Code that you must apply to the facts you find to determine whether the State has proven beyond a reasonable doubt that the defendant violated a specific criminal statute. The statute read together with the indictment identifies the elements which the State must prove beyond a reasonable doubt to establish the guilt of the defendant on each of the counts in the indictment.

[CHARGE IF APPLICABLE]

In addition, you will have the opportunity to consider certain other offenses besides those charged specifically in the indictment. These are what we call lesser offenses, crimes or offenses of a lesser degree that are considered to be included within the charges brought in the indictment. I will give you instructions about how to consider these lesser offenses shortly.

[CHARGE IF APPLICABLE]

MULTIPLE CHARGES

There are _____ offenses charged in the indictment. They are separate offenses by separate counts in the indictment. In your determination of whether the State has proven the defendant guilty of the crimes charged in the indictment beyond a reasonable doubt, the defendant is entitled to have each count considered separately by the evidence which is relevant and material to that particular charge based on the law as I will give it to you.

[CHARGE IF APPLICABLE]

WHERE MORE THAN ONE DEFENDANT:³

You must also return separate verdicts for each defendant as to each of the charges being tried. In other words, you will have to decide each case individually. Whether the verdicts as to each defendant are the same depends on the evidence and your determination as judges of the facts.

[CHARGE SPECIFIC OFFENSES AND LESSER OFFENSES]⁴

³ When accomplice liability is involved charge according to State v. Bielkiewicz, 267 N.J. Super. 520 (App. Div. 1993).

⁴ This bracketed text should be deleted from the final draft of the charge to be given to the jury.

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DELIBERATIONS

I will now give you some information on the final part of these instructions on conducting your deliberations.

There is nothing different in the way a jury is to consider the proof in a criminal case from that in which all reasonable persons treat any questions depending upon evidence presented to them. You are expected to use your own good common sense; consider the evidence for only those purposes for which it has been admitted and give it a reasonable and fair construction in the light of your knowledge of how people behave. It is the quality of the evidence, not simply the number of witnesses that control.

As I said before, any exhibit that has not been marked into evidence cannot be given to you in the jury room even though it may have been marked for identification. Only those items marked in evidence can be given to you.

Very shortly you will go into the jury room to start your deliberations. I remind you that, during deliberations, and, in fact, any time that you are in the jury deliberation room, you must keep any cell phone, pager or other communication device you may possess turned off.

You are to apply the law as I have instructed you to the facts as you find them to be, for the purpose of arriving at a fair and correct verdict. The verdict must represent the considered judgment of each juror and must be unanimous as to each charge. This means all of you must agree if the defendant is guilty or not guilty on each charge.

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous but do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict. You are not partisans. You are judges--judges of the facts.

UNANIMOUS VERDICT

You may return on each crime charged a verdict of either not guilty or guilty. Your verdict, whatever it may be as to each crime charged, must be unanimous. Each of the twelve members of

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the deliberating jury must agree as to the verdict.⁵

INSTRUCTIONS AS TO VERDICT FORM

To assist you in reporting a verdict I have prepared a verdict sheet for you. You will have this with you in the jury room. This verdict form is not evidence. This form is only to be used to report your verdict.

[Go Over Form With Jury]

JURY QUESTIONS

If, during your deliberations, you have a question or feel that you need further assistance or instructions from me, or wish to have certain testimony read or played back (or video or audio exhibit played back), write your question or request on a sheet of paper and give it to the sheriff's officer who will be standing at the jury room door who, in turn, will give it to me. That court officer will be sworn to perform certain duties, such as keeping the jury together in a private place for purposes of deliberations, and ensuring that no one speaks with you except by order of the court.

You are not to discuss with or ask the officer about trial matters or procedures. Please be aware that the officer is also instructed not to initiate communications with you, or to enter the deliberation room without your consent, except to communicate on my behalf regarding administrative matters, such as information about breaks or meals, or otherwise to ensure your comfort. If the officer must enter the deliberation room, the officer will knock first and complete the officer's responsibilities without delay. When the officer enters the room, please stop your deliberations and do not resume until the officer has left and closed the door.

Once I receive your question or request, I will go over it with the lawyers and will try to answer it as quickly as possible. Please be patient. If you do send out a question do not disclose where you stand on your deliberations. Do not tell us, as an example, that you are 10 to 2 or 8 to 4 on a given charge. If you have reached a unanimous verdict on each charge, knock on the door and let the officer know that and we will bring you into court as soon as possible to receive your verdict.

I have come to the end of my charge.

⁵ See State v. Milton, 178 N.J. 421 (2004), setting forth the process to be used in determining the unanimity of the verdict. In some cases, a specific unanimity instruction is appropriate. See State v. Parker, 124 N.J. 628 (1991) and State v. Frisby, 174 N.J. 583 (2002). In those cases, a judge should instruct a jury that it must be unanimous as to a particular theory of a case or as to a particular set of facts. The Judge must also provide the jury a special verdict form in such cases.

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[Do sidebar to give counsel opportunity to note objections on the record or excuse jury for that purpose]

[Recharge if Necessary]