

PRELIMINARY INSTRUCTIONS TO THE JURY

My name is _____ and I'm a Judge in the Superior Court of the State of New Jersey.

Ladies and Gentlemen, you have been brought here today so that we may select a jury for this case, which is entitled the **State of New Jersey v.** _____. We are about to begin a process called the voir dire and the purpose of the voir dire is very simple. It is to obtain a jury which is able to hear this case without any bias, prejudice or pre-conceived ideas. In short the idea is to select a fair jury.

Members of the panel we are here to try the matter in dispute between the **State of New Jersey and** _____. This is a criminal case and the charge(s) is (are) _____.

I realize that jury service may be new to some of you, so a few preliminary remarks may prove to be helpful.

The first step in a jury trial is the selection of the jury. This process is important because both the State and the defendant are entitled to jurors who are impartial and agree to keep their minds open until a verdict is reached. Jurors must be as free as humanly possible from bias, prejudice or sympathy and must not be influenced by preconceived ideas.

Every one of us makes implicit or unconscious associations and assumptions, and has biases of which we are not consciously aware. Implicit or unconscious thinking, including implicit bias, affects what we see and hear, how we remember what we see and hear, and how we make decisions. Jurors have an obligation to judge the facts and apply the law as instructed without bias, prejudice, or partiality. To do so, jurors need to acknowledge their own implicit or unconscious biases so as to not be affected by them during the trial and jury deliberations.

Those of you selected as jurors on this case shall serve as judges of the facts. In other words, you will listen to the testimony of witnesses, examine any physical evidence introduced and thereafter determine the facts.

PRELIMINARY INSTRUCTIONS TO THE JURY

I am the judge of the law. At the conclusion of this matter, after the evidence has been presented and counsel have made their closing arguments, I will tell you what the law is and you must apply that law to the facts in order to reach a fair and impartial verdict.

Although you may be qualified to serve as a juror in most cases, there may be something that could disqualify you in this case or make it embarrassing for you to serve. In order to learn such information and to ensure that you are impartial and unbiased with respect to this particular trial, I will ask each of you a number of standard questions about your background and your views on certain issues, as well as several questions that ask about your television and Internet viewing habits, favorite news sources, and the like. This process ensures fairness in each case. I will go over each of the questions so that you understand them [and you've been given a printed version as well]. Please understand that the questions I will ask are for a legitimate purpose and not intended to pry into your personal affairs. It is a way for me, as well as the attorneys and the defendant, to learn life experiences that may affect your service on this trial. Do not hesitate to speak your mind honestly and plainly. It is very important that you answer each question fully and truthfully. Keep in mind that there are no right or wrong answers. Truthful and honest answers are necessary so that a fair and impartial jury can be selected.

As we mature we all to some extent develop certain biases, prejudices, fixed opinions and views. We develop these from our families, others around us, the media and from our everyday experiences. You are entitled to be who you are and to feel and think about things as you do. It is important to recognize any biases, prejudices, fixed opinions and views that you may have and to disclose them to me during jury selection. This includes recognizing and not being guided by implicit or unconscious biases. If for any reason my questions do not cover why you would not be able to listen with an open mind to the evidence in this case or be unable to reach a fair and impartial verdict, it is necessary that you volunteer this information to me when you are questioned.

If at any time during the jury selection process you wish to discuss anything with me concerning your ability to serve as a juror that you believe touches on a sensitive matter, raise your hand and I will speak with you outside the presence of the other jurors but in the presence of the attorneys [**choose appropriate:** [and the defendant] [and the defendant

PRELIMINARY INSTRUCTIONS TO THE JURY

who is listening at counsel table through a headset].¹ I do this because you may feel more comfortable responding with some degree of privacy and because I need you to be completely open and honest in your responses. I also want to avoid the risk that your comment could influence your fellow jurors if they heard it. These discussions will also be recorded as part of the court record.

After I have questioned each of you, you may be excused as a juror by me if in my opinion there is a valid reason why you should not serve. Each attorney may also excuse a limited number of jurors without giving any reason for doing so. In the event you are excused, please do not consider this an insult or take it personally. It is merely part of the process employed in selecting a jury as permitted by our Court Rules. If you are excused and return to the juror assembly area, it is important that you do not discuss anything about this case or about your experience in this courtroom with your fellow jurors -- because any such information may affect the ability of those individuals to serve on this trial or another trial.

Briefly this case involves: **EXPLAIN NATURE OF THE CASE AT BAR**

Our best estimate is that this case will take _____ or _____ days to complete. At the outside the attorneys and I feel that it could possibly take as much as _____ days, but it is highly unlikely that it would take any more time than that.

(Discuss Daily Schedule of Trial)

This is a criminal case there are certain principles of law that must be accepted and followed by jurors.²

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.

¹ See State v. W.A. 184 N.J. 45 (2005), advising that the defendant has the right to be present during voir dire sidebar conferences but must request to be present.

² At the least, the jury must be asked whether they understand the basic principles of presumption of innocence and those governing the indictment and whether they can abide by these principles. State v. Lumumba, 253 N.J. Super. 375, 394 (App. Div. 1992).

PRELIMINARY INSTRUCTIONS TO THE JURY

The defendant has pleaded not guilty to the charge(s) and is presumed to be innocent. Unless each and every 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 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 the defendant the benefit of the doubt and find him/her not guilty.

You will have to apply the law as I give it to you regardless of your own personal feelings about it.

As this is a criminal case, your verdict must be unanimous; that is, all 12 deliberating jurors must agree upon the verdict.³

³ See State v. Milton, 178 N.J. 421 (2004), setting forth the process to be used to determine the unanimity of the verdict.

PRELIMINARY INSTRUCTIONS TO THE JURY

I would like to first introduce to you the attorneys. The State of New Jersey will be represented throughout these proceedings by _____. I would like (him/her) to rise and introduce (himself/herself) to you. The defendant will be represented by _____.⁴ I would like (him/her) to rise and introduce (himself/herself) to you, and (his/her) client.

(Conduct the Voir Dire)

As you may have noticed, defendant is dressed in [jail] [prison] garb. You must not speculate about the reason the defendant is wearing such clothing. The fact that (NAME OF DEFENDANT) is dressed in [jail] [prison] clothing is irrelevant to the issue of whether the State has proven defendant's guilt of the charge(s) beyond a reasonable doubt and cannot form the basis of any discussion during your deliberations. Will any of you have any difficulty in carrying out my instruction on this matter?

[CHARGE NOW IF NOT PREVIOUSLY CHARGED BEFORE FIRST BREAK]

INSTRUCTIONS REGARDING JUROR RESEARCH
FIRST RECESS

In a few minutes you will be excused for a short break. I instruct that you must not discuss this case among yourselves or with anyone else during this or any other recess.

No one is permitted to talk to you about this case outside the courtroom. If you should see any of the attorneys or parties and they do not greet you, do not be offended or think that they are being rude. They are not permitted to talk to you. If anyone approaches you and tries to talk about this case report that to me or my staff immediately without discussing it with your fellow jurors. Do NOT discuss anything about this case with your fellow jurors until I instruct you to do so at the end of the case after you have heard all of the evidence produced in this courtroom, heard the summations of the lawyers, heard my instructions to you about the law. Once I instruct you to begin your deliberations in the privacy of the jury room that will be the first time you can discuss this case. You may NOT have any discussions with anyone before then about this case.

During this or any other recess, or when you go home at the end of the day, I instruct you NOT to discuss this case with anyone such as your fellow jurors, friends, co-workers

⁴ Do not mention that the defense attorney is a public defender.

PRELIMINARY INSTRUCTIONS TO THE JURY

or family members. Do NOT text them, phone them, e-mail them, tweet them about this case by any means either in person or by any electronic means. Every conversation about a jury trial begins with just a single sentence no matter how innocent. If you start talking about this trial with someone else, that person will say something that might affect your thinking about the facts of this case. That would obviously be unfair to both parties in this case because what some other person says outside this courtroom is NOT evidence in this case.

I instruct you not to read or have anyone read to you any newspaper accounts or search the internet for any media accounts about this trial or read or have anyone read to you or search the Internet for blogs, tweets or Facebook pages about any persons, topics or places related to this case. I also instruct you not to visit the scene(s) of the incident(s) or try to view (it/them) on the Internet through Mapquest or Google Earth type sites. Do not do any legal or factual research about anyone or any topic connected to this case. You are NOT here as investigators.

If you are sworn as jurors in this case, you will become the sole judges of the facts, so you must remain impartial throughout the trial. You must decide the facts of this case solely from the evidence produced in this courtroom and NOTHING ELSE. It would be unfair and a violation of your oath as jurors to base your decision about the facts of this case upon something that was said to you or discovered by you outside this courtroom.