

STATEMENT OF CHARGE

Brandon Lee Bradley, the defendant in this case, has been accused of the crimes of:

COUNT 1: FIRST DEGREE MURDER OF A LAW ENFORCEMENT OFFICER WITH A FIREARM

COUNT 2: ROBBERY

COUNT 3: FLEEING OR ATTEMPTING TO ELUDE A LAW ENFORCEMENT OFFICER – SIREN AND LIGHTS ACTIVATED WITH HIGH SPEED OR RECKLESS DRIVING

COUNT 4: RESISTING AN OFFICER WITH VIOLENCE

FILED IN OPEN COURT

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CLERK

CIRCUIT AND COUNTY COURT

By P. M. D.C.

Case # 05-2012-CF-035337-AXXX-XX

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STATE OF FLORIDA v. BRANDON BRADLEY

CASE 05-2012-CF-035337-AXXX-XX



INTRODUCTION TO HOMICIDE

In this case Brandon Lee Bradley is accused of FIRST DEGREE MURDER Murder in the First Degree includes the lesser crimes of Murder in the Second Degree, Murder in the Third Degree, and Manslaughter, all of which are unlawful.

A killing that is excusable or was committed by the use of justifiable deadly force is lawful.

If you find Barbara Pill was killed by Brandon Lee Bradley, you will then consider the circumstances surrounding the killing in deciding if the killing was FIRST DEGREE MURDER or was Murder in the Second Degree Murder in the Third Degree Manslaughter, or whether the killing was excusable or resulted from justifiable use of deadly force.

JUSTIFIABLE HOMICIDE

The killing of a human being is justifiable homicide and lawful if necessarily done while resisting an attempt to murder or commit a felony upon the defendant, or to commit a felony in any vehicle in which the defendant was at the time of the killing.

EXCUSABLE HOMICIDE

The killing of a human being is excusable, and therefore lawful, under any one of the following three circumstances:

1. When the killing is committed by accident and misfortune in doing any lawful act by lawful means with usual ordinary caution and without any unlawful intent, or
2. When the killing occurs by accident and misfortune in the heat of passion, upon any sudden and sufficient provocation, or
3. When the killing is committed by accident and misfortune resulting from a sudden combat, if a dangerous weapon is not used and the killing is not done in a cruel and unusual manner.

“Dangerous weapon” is any weapon that, taking into account the manner in which it is used, is likely to produce death or great bodily harm.

I now instruct you on the circumstances that must be proved before Brandon Lee Bradley may be found guilty of FIRST DEGREE MURDER or any lesser included crime.

MURDER - FIRST DEGREE

There are two ways in which a person may be convicted of First Degree Murder. One is known as Premeditated Murder and the other is known as Felony Murder.

To prove the crime of First Degree Premeditated Murder, the State must prove the following three elements beyond a reasonable doubt:

1. Barbara Pill is dead.
2. The death was caused by the criminal act of Brandon Lee Bradley
3. There was a premeditated killing of Barbara Pill.

An "act" includes a series of related actions arising from and performed pursuant to a single design or purpose.

"Killing with premeditation" is killing after consciously deciding to do so. The decision must be present in the mind at the time of the killing. The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the killings. The period of time must be long enough to allow reflection by the defendant. The premeditated intent to kill must be formed before the killing.

The question of premeditation is a question of fact to be determined by you from the evidence. It will be sufficient proof of premeditation if the circumstances of the killing and the conduct of the accused convince you beyond a reasonable doubt of the existence of premeditation at the time of the killing.

If a person has a premeditated design to kill one person and in attempting to kill that person actually kills another person, the killing is premeditated.

FELONY MURDER - FIRST DEGREE

To prove the crime of First Degree Felony Murder, the State must prove the following three elements beyond a reasonable doubt:

1. Barbara Pill is dead.
2. The death occurred as a consequence of and while Brandon Lee Bradley was escaping from the immediate scene of a robbery.
3. Brandon Lee Bradley was the person who actually killed Barbara Pill.

In order to convict of First Degree Felony Murder, it is not necessary for the State to prove that the defendant had a premeditated design or intent to kill.

ROBBERY

To prove the crime of Robbery, the State must prove the following four elements beyond a reasonable doubt:

1. Brandon Lee Bradley took the property from the person or custody of Andrew Jordan, Mohammad Malik.
2. Force, violence, assault, or putting in fear was used in the course of the taking.
3. The property taken was of some value.
4. The taking was with the intent to permanently or temporarily deprive Andrew Jordan, Mohammad Malik of his right to the property or any benefit from it, or to appropriate the property of Andrew Jordan, Mohammad Malik to his own use or to the use of any person not entitled to it.

An “assault” is an intentional and unlawful threat, either by word or act, to do violence to a victim, when it appears the person making the threat has the ability to carry out the threat, and the act creates in the mind of the victim a well-founded fear that violence is about to take place.

If the circumstances were such as to ordinarily induce fear in the mind of a reasonable person, then the victim may be found to have been in fear, and actual fear on the part of the victim need not be shown.

“In the course of the taking” means that the act occurred prior to, contemporaneous with, or subsequent to the taking of the property and that the act and the taking of the property constitute continuous series of acts or events.

If you find that the taking of property occurred as an afterthought to the use of force or violence against the victim, the taking does not constitute robbery but may still constitute theft.

In order for a taking of property to be robbery, it is not necessary that the person robbed be the actual owner of the property. It is sufficient if the victim has the custody of the property at the time of the offense.

The taking must be by the use of force or violence or by assault so as to overcome the resistance of the victim, or by putting the victim in fear so that he does not resist. The law does not require that the victim of robbery resist to any particular extent or that the victim offer any actual physical resistance if the circumstances are such that the victim is placed in fear of death or great bodily harm if he or she does resist. But unless prevented by fear there must be some resistance to make the taking one done by force or violence.

In order for a taking by force, violence or putting in fear to be robbery, it is not necessary that the taking be from the person of the victim. It is sufficient if the property taken is under the actual control of the victim so that it cannot be taken without the use of force, violence or intimidation directed against the victim.

**FLEEING TO ELUDE A LAW ENFORCEMENT OFFICER
(Siren and lights activated with high speed or reckless driving)**

To prove the crime of Fleeing to Elude a Law Enforcement Officer, the state must prove the following four elements beyond a reasonable doubt:

1. Brandon Lee Bradley was operating a motor vehicle upon a street or highway in Florida.
2. Brandon Lee Bradley, knowing he had been directed to stop by a duly authorized law enforcement officer, willfully fled in a vehicle in an attempt to elude a law enforcement officer.
3. The law enforcement officer was in an authorized law enforcement patrol vehicle with agency insignia and other jurisdictional markings prominently displayed on the vehicle and with siren and lights activated.
4. During the course of the fleeing or the attempt to elude, Brandon Lee Bradley drove at high speed or in any manner demonstrating a wanton disregard for the safety of persons or property.

“Operator” means any person who is in actual physical control of a motor vehicle upon the highway.

“Street or highway” means the entire width between boundary lines of every way or place of whatever nature when any part thereof is open to the public for purposes of vehicular traffic.

“Vehicle” means every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.

“Willfully” means intentionally, knowingly, and purposely.

RESISTING OFFICER WITH VIOLENCE

To prove the crime of Resisting Officer with Violence, the State must prove the following four elements beyond a reasonable doubt:

1. Brandon Lee B Radley knowingly and willfully resisted, obstructed or opposed Deputy Barbara Pill by offering to or doing violence to her.
2. At the time, Deputy Barbara Pill was engaged in the lawful execution of a legal duty.
3. At the time, Barbara Pill was an officer.
4. At the time, Brandon Bradley knew Barbara Pill was an officer.

The court now instructs you that every Brevard County Sheriff's Office Deputy is an officer within the meaning of this law.

“Offering” to do violence means threatening to do violence.

WHEN THERE ARE LESSER INCLUDED CRIMES OR ATTEMPTS

In considering the evidence, you should consider the possibility that although the evidence may not convince you that the defendant committed the main crime of which he is accused, there may be evidence that he committed other acts that would constitute a lesser included crime. Therefore, if you decide that the main accusation has not been proved beyond a reasonable doubt, you will next need to decide if the defendant is guilty of any lesser included crime. The lesser crimes indicated in the definition of COUNT 1- FIRST DEGREE MURDER are:

SECOND DEGREE MURDER

THIRD DEGREE FELONY MURDER

MANSLAUGHTER

The lesser crimes indicated in the definition of COUNT 2- ROBBERY are:

GRAND THEFT

THEFT

ASSAULT

The lesser crime indicated in the definition of COUNT 3- FLEEING OR ATTEMPTING TO ELUDE A LAW ENFORCEMENT OFFICER – SIREN AND LIGHTS ACTIVATED WITH HIGH SPEED OR RECKLESS DRIVING are:

FLEEING TO ELUDE A LAW ENFORCEMENT OFFICER WITH LIGHTS & SIREN

FLEEING TO ELUDE A LAW ENFORCEMENT OFFICER

The lesser crime indicated in the definition of COUNT 4- RESISTING AN OFFICER WITH VIOLENCE is:

RESISTING AN OFFICER WITHOUT VIOLENCE

MURDER - SECOND DEGREE

To prove the crime of Second Degree Murder, the State must prove the following three elements beyond a reasonable doubt:

1. Barbara Pill is dead.
2. The death was caused by the criminal act of Brandon Lee Bradley.
3. There was an unlawful killing of Barbara Pill by an act imminently dangerous to another and demonstrating a depraved mind without regard for human life.

An "act" includes a series of related actions arising from and performed pursuant to a single design or purpose.

An act is "imminently dangerous to another and demonstrating a depraved mind" if it is an act or series of acts that:

1. a person of ordinary judgment would know is reasonably certain to kill or do serious bodily injury to another, and
2. is done from ill will, hatred, spite or an evil intent, and
3. is of such a nature that the act itself indicates an indifference to human life.

In order to convict of Second Degree Murder, it is not necessary for the State to prove the defendant had an intent to cause death.

FELONY MURDER - THIRD DEGREE

To prove the crime of Third Degree Felony Murder, the State must prove the following three elements beyond a reasonable doubt:

1. Barbara Pill is dead.
2. a. The death occurred as a consequence of and while Brandon Lee Bradley was engaged in the commission of Grand Theft, or
b. The death occurred as a consequence of and while Brandon Lee Bradley was escaping from the immediate scene of Grand Theft.
3. Brandon Lee Bradley was the person who actually killed Barbara Pill.

It is not necessary for the State to prove the killing was perpetrated with a design to effect death.

MANSLAUGHTER

To prove the crime of Manslaughter, the State must prove the following two elements beyond a reasonable doubt:

1. Barbara Pill is dead.
2. a. Brandon Lee Bradley intentionally committed an act or acts that caused the death of Barbara Pill, or
b. Brandon Lee Bradley intentionally procured an act that caused the death of Barbara Pill, or
c. The death of Barbara Pill was caused by the culpable negligence of Brandon Lee Bradley.

The defendant cannot be guilty of manslaughter by committing a merely negligent act or if the killing was either justifiable or excusable homicide:

Each of us has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence.

In order to convict of manslaughter by act, it is not necessary for the State to prove that the defendant had an intent to cause death, only an intent to commit an act that was not merely negligent, justified or excusable and which caused death.

To “procure” means to persuade, induce, prevail upon or cause a person to do something.

I will now define “culpable negligence” for you. Each of us has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence. But culpable negligence is more than a failure to use ordinary care toward others. In order for negligence to be culpable, it must be gross and flagrant. Culpable negligence is a course of conduct showing reckless disregard of human life, or of the safety of persons exposed to its dangerous effects, or such an entire want of care as to raise a presumption of a conscious indifference to consequences, or which shows wantonness or recklessness, or a grossly careless disregard of the safety and welfare of the public, or such an indifference to the rights of others as is equivalent to an intentional violation of such rights.

The negligent act or omission must have been committed with an utter disregard for the safety of others. Culpable negligence is consciously doing an act or following a course of conduct that the defendant must have known, or reasonably should have known, was likely to cause death or great bodily injury.

If you find the defendant guilty of manslaughter, you must then determine whether the State has further proved beyond a reasonable doubt that:

Barbara Pill was at the time an officer who was at the time performing duties that were within the course of her employment. The court now instructs you that a Deputy with the Brevard County Sheriff's Office is an officer.

"Dangerous weapon" is any weapon that, taking into account the manner in which it was used, is likely to produce death or great bodily harm.

"Officer" means any person employed or appointed as a full-time, part-time or auxiliary law enforcement officer, correctional officer, or correctional probation officer.

POSSESSION OF A FIREARM WITH DISCHARGE CAUSING DEATH

If you find that Brandon Lee Bradley committed First Degree Murder, or any lesser included offense of such crime, and you also find beyond a reasonable doubt that during the commission of the crime he discharged a firearm, and in doing so, caused the death of Deputy Barbara Pill, you should find the defendant guilty of such crime with discharge of a firearm causing death.

If you find that Brandon Lee Bradley committed First Degree Murder, or any lesser included offense of such crime, and you also find beyond a reasonable doubt that during the commission of the crime he discharged a firearm, you should find the defendant guilty of such crime with discharge of a firearm.

If you find that Brandon Lee Bradley committed First Degree Murder or any lesser included offense of such crime, and you also find beyond a reasonable doubt that during the commission of the crime he actually possessed a firearm, you should find the defendant guilty of such crime with actual possession of a firearm.

A "firearm" is legally defined as any weapon which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime.

To "actually possess" a firearm means the defendant:

- a) carried a firearm on his person, or
- b) had a firearm within immediate physical reach with ready access with the intent to use the firearm during the commission of the crime.

THEFT

To prove the crime of Theft, the State must prove the following two elements beyond a reasonable doubt:

1. Brandon Lee Bradley knowingly and unlawfully obtained or used or endeavored to obtain or to use the property of Andrew Jordan, Mohammad Malik.
2. He did so with intent to, either temporarily or permanently,
 - a. deprive Andrew Jordan, Mohammad Malik of his right to the property or any benefit from it; or
 - b. appropriate the property of Andrew Jordan, Mohammad Malik to his own use or to the use of any person not entitled to it.

If you find the defendant guilty of theft, you must also determine if the State has proved beyond a reasonable doubt whether the value of the property taken was \$300 or more.

Proof of possession of recently stolen property, unless satisfactorily explained, gives rise to an inference that the person in possession of the property knew or should have known that the property had been stolen.

“Obtains or uses” means any manner of taking or exercising control over property.

“Endeavor” means to attempt or try.

“Property” means anything of value.

“Value” means the market value of the property at the time and place of the offense, or if that value cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the offense.

If the exact value of the property cannot be ascertained, you should attempt to determine a minimum value. If you cannot determine the minimum value, you must find the value is less than \$300.

Amounts of value of separate properties, involved in thefts committed pursuant to one scheme or course of conduct, whether the thefts are from the same person or several persons, may be added together to determine the total value of the theft.

FLEEING TO ELUDE A LAW ENFORCEMENT OFFICER

(Siren and Lights Activated)

To prove the crime of fleeing to elude a law enforcement officer, the state must prove the following three elements beyond a reasonable doubt:

1. Brandon Lee Bradley was operating a motor vehicle upon a street or highway in Florida.
2. Brandon Lee Bradley knowing he had been directed to stop by a duly authorized law enforcement officer, willfully fled in a vehicle in an attempt to elude a law enforcement officer.
3. The law enforcement officer was in an authorized law enforcement patrol vehicle with agency insignia and other jurisdictional markings prominently displayed on the vehicle and with siren and lights activated.

“Operator” means any person who is in actual physical control of a motor vehicle upon the highway.

“Street or highway” means the entire width between boundary lines of every way or place of whatever nature when any part thereof is open to the public for purposes of vehicular traffic.

“Vehicle” means every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.

“Willfully” means intentionally, knowingly, and purposely.

FLEEING TO ELUDE A LAW ENFORCEMENT OFFICER

To prove the crime of fleeing to elude a law enforcement officer, the state must prove the following three elements beyond a reasonable doubt:

1. Brandon Lee Bradley was operating a motor vehicle upon a street or highway in Florida.
2. A duly authorized law enforcement officer ordered the defendant to stop or remain stopped.
3. Brandon Lee Bradley knowing he had been ordered to stop by a duly authorized law enforcement officer,
 - a. willfully refused or failed to stop the vehicle in compliance with the order ; or
 - b. having stopped the vehicle, willfully fled in a vehicle in an attempt to elude a law enforcement officer.

“Operator” means any person who is in actual physical control of a motor vehicle upon the highway.

“Street or highway” means the entire width between boundary lines of every way or place of whatever nature when any part thereof is open to the public for purposes of vehicular traffic.

“Vehicle” means every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.

“Willfully” means intentionally, knowingly, and purposely.

RESISTING OFFICER WITHOUT VIOLENCE

To prove the crime of Resisting Officer without Violence, the State must prove the following four elements beyond a reasonable doubt:

1. Brandon Lee Bradley resisted, obstructed or opposed.
2. At the time, Barbara Pill was engaged in the lawful execution of a legal duty.
3. At the time, Barbara Pill was an officer.
4. At the time, Brandon Lee Bradley knew Barbara Pill was an officer.

The court now instructs you that every Deputy with the Brevard County Sheriff's Office is an officer within the meaning of this law.

PRINCIPALS

If the defendant helped another person or persons commit or attempt to commit a crime, the defendant is a principal and must be treated as if he had done all the things the other person or persons did if

1. the defendant had a conscious intent that the criminal act be done and
2. the defendant did some act or said some word which was intended to and which did incite, cause, encourage, assist or advise the other person or persons to actually commit or attempt to commit the crime.

To be a principal, the defendant does not have to be present when the crime is committed or attempted.

VOLUNTARY INTOXICATION

Voluntary intoxication resulting from the use of a controlled substance is not a defense to a crime. Evidence of a defendant's voluntary intoxication may not be taken into consideration to show that he lacked the specific intent to commit any crime. A person is voluntarily intoxicated if he knowingly consumed a substance that he knew or should have known could cause intoxication.

MENTAL CONDITION

Evidence of any abnormal mental condition is not a defense to any crime. Evidence of a defendant's abnormal mental condition may not be taken into consideration to show that he lacked the specific intent to commit any crime. Such evidence is to be considered by you only for the purpose of determining whether the defendant's interview was knowingly, voluntarily and freely made.

JUSTIFIABLE USE OF DEADLY FORCE

An issue in this case is whether the defendant acted in self-defense. It is a defense to the offense with which Brandon Lee Bradley is charged if the death of Barbara Pill resulted from the justifiable use of deadly force.

“Deadly force” means force likely to cause death or great bodily harm.

The use of deadly force is justifiable only if the defendant reasonably believes that the force is necessary to prevent imminent death or great bodily harm to himself while resisting:

1. another’s attempt to murder him, or
2. any attempt to commit Robbery upon him, or
3. any attempt to commit Robbery upon or in a vehicle occupied by him.

A person is justified in using deadly force if he reasonably believes that such force is necessary to prevent

1. imminent death or great bodily harm to himself or another, or
2. the imminent commission of Robbery against himself or another.

However, the use of deadly force is not justifiable if you find Brandon Lee Bradley was attempting to commit, committing, or escaping after the commission of a robbery.

A person is not justified in using force to resist an arrest by a law enforcement officer, or to resist a law enforcement officer who is engaged in the execution of a legal duty, if the law enforcement officer was acting in good faith and he or she is known, or reasonably appears, to be a law enforcement officer.

However, if an officer uses excessive force to make an arrest, then a person is justified in the use of reasonable force to defend himself, but only to the extent he reasonably believes such force is necessary.

In deciding whether defendant was justified in the use of deadly force, you must judge him by the circumstances by which he was surrounded at the time the force was used. The danger facing the defendant need not have been actual; however, to justify the use of deadly force, the appearance of danger must have been so real that a reasonably cautious and prudent person under the same circumstances would have believed that the danger could be avoided only through the use of that force. Based upon appearances, the defendant must have actually believed that the danger was real.

If the defendant was not engaged in an unlawful activity and was attacked in any place where he had a right to be, he had no duty to retreat and had the right to stand his ground and meet force with force, including deadly force, if he reasonably believed that it was necessary to do so to prevent death or great bodily harm to himself or to prevent the commission of a forcible felony.

A “forcible felony” is any degree of Murder, Manslaughter, Aggravated Battery, Aggravated Assault or Shooting into an Occupied Vehicle.

If the defendant was in an occupied vehicle where he had a right to be, he is presumed to have had a reasonable fear of imminent death or great bodily harm to himself if Barbara Pill had unlawfully and forcibly entered, removed or attempted to remove another person against that person’s will from that dwelling, residence or occupied vehicle and the defendant had reason to believe that had occurred. The defendant had no duty to retreat under such circumstances.

The presumption of reasonable fear of imminent death or great bodily harm does not apply if:

- a. the person who uses defensive force is engaged in an unlawful activity or is using the occupied vehicle to further an unlawful activity; or
- b. the person against whom the defensive force is used is a law enforcement officer, who enters or attempts to enter a vehicle in the performance of her official duties and the officer identified herself in accordance with any applicable law or the person using the force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer.

A person who unlawfully and by force enters or attempts to enter another's occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

As used with regard to self defense:

"Vehicle" means a conveyance of any kind, whether or not motorized, which is designed to transport people or property.

In considering the issue of self-defense, you may take into account the relative physical abilities and capacities of the defendant and Barbara Pill.

If in your consideration of the issue of self-defense you have a reasonable doubt on the question of whether the defendant was justified in the use of deadly force, you should find the defendant not guilty.

However, if from the evidence you are convinced that the defendant was not justified in the use of deadly force, you should find him guilty if all the elements of the charge have been proved.

PLEA OF NOT GUILTY; REASONABLE DOUBT; AND BURDEN OF PROOF

The defendant has entered a plea of not guilty. This means you must presume or believe the defendant is innocent. The presumption stays with the defendant as to each material allegation in the information through each stage of the trial unless it has been overcome by the evidence to the exclusion of and beyond a reasonable doubt.

To overcome the defendant's presumption of innocence, the State has the burden of proving the crime with which the defendant is charged was committed and the defendant is the person who committed the crime.

The defendant is not required to present evidence or prove anything.

Whenever the words "reasonable doubt" are used you must consider the following:

A reasonable doubt is not a mere possible doubt, a speculative, imaginary or forced doubt. Such a doubt must not influence you to return a verdict of not guilty if you have an abiding conviction of guilt. On the other hand, if, after carefully considering, comparing and weighing all the evidence, there is not an abiding conviction of guilt, or, if, having a conviction it is one which is not stable but one which wavers and vacillates, then the charge is not proved beyond every reasonable doubt and you must find the defendant not guilty because the doubt is reasonable.

It is to the evidence introduced in this trial, and to it alone, that you are to look for that proof.

A reasonable doubt as to the guilt of the defendant may arise from the evidence, conflict in the evidence or the lack of evidence.

If you have a reasonable doubt, you should find the defendant not guilty. If you have no reasonable doubt, you should find the defendant guilty.

WEIGHING THE EVIDENCE

It is up to you to decide what evidence is reliable. You should use your common sense in deciding which is the best evidence, and which evidence should not be relied upon in considering your verdict. You may find some of the evidence not reliable, or less reliable than other evidence.

You should consider how the witnesses acted, as well as what they said. Some things you should consider are:

1. Did the witness seem to have an opportunity to see and know the things about which the witness testified?
2. Did the witness seem to have an accurate memory?
3. Was the witness honest and straightforward in answering the attorney's questions?
4. Did the witness have some interest in how the case should be decided?
5. Does the witness' testimony agree with the other testimony and other evidence in the case?
6. Has the witness been offered or received any money, preferred treatment or other benefit in order to get the witness to testify?
7. Had any pressure or threat been used against the witness that affected the truth of the witness's testimony?
8. Did the witness at some other time make a statement that is inconsistent with the testimony he or she gave in court?
9. Has the witness been convicted of a felony or misdemeanor involving dishonesty or false statement?

Whether the State has met its burden of proof does not depend upon the number of witnesses it has called or upon the number of exhibits it has offered, but instead upon the nature and quality of the evidence presented.

The fact that a witness is employed in law enforcement does not mean that his or her testimony deserves more or less consideration than that of any other witness.

Expert witnesses are like other witnesses, with one exception – the law permits an expert witness to give his or her opinion. However, an expert's opinion is reliable only when given on a

subject about which you believe him or her to be an expert. Like other witnesses, you may believe or disbelieve all or any part of an expert's testimony.

You must consider the testimony of some witnesses with more caution than others. For example, a witness who claims to have helped the defendant commit a crime has been promised immunity from prosecution hopes to gain more favorable treatment in his or her own case, may have reason to make a false statement in order to strike a good bargain with the State. This is particularly true when there is no other evidence tending to agree with what the witness says about the defendant. So, while a witness of that kind may be entirely truthful when testifying, you should consider his or her testimony with more caution than the testimony of other witnesses. However, if the testimony of such a witness convinces you beyond a reasonable doubt of the defendant's guilt, or the other evidence in the case does so, then you should find the defendant guilty.

It is entirely proper for a lawyer to talk to a witness about what testimony the witness would give if called to the courtroom. The witness should not be discredited by talking to a lawyer about his or her testimony.

You may rely upon your own conclusion about the credibility of any witness. A juror may believe or disbelieve all or any part of the evidence or the testimony of any witness.

DEFENDANT NOT TESTIFYING

The constitution requires the State to prove its accusations against the defendant. It is not necessary for the defendant to disprove anything. Nor is the defendant required to prove his innocence. It is up to the State to prove the defendant's guilt by evidence.

The defendant exercised a fundamental right by choosing not to be a witness in this case. You must not view this as an admission of guilt or be influenced in any way by his decision. No juror should ever be concerned that the defendant did or did not take the witness stand to give testimony in the case.

DEFENDANT'S STATEMENTS

A statement claimed to have been made by the defendant outside of court has been placed before you. Such a statement should always be considered with caution and weighed with great care to make certain it was knowingly, voluntarily and freely made.

Therefore, you must determine from the evidence that the defendant's alleged statement was knowingly, voluntarily and freely made.

In making this determination, you should consider the total circumstances, including but not limited to:

- 1) whether, when the defendant made the statement, he had been threatened in order to get him to make it, and
- 2) whether anyone had promised him anything in order to get him to make it.

If you conclude the defendant's out of court statement was not knowingly, voluntarily and freely made, you should disregard it.

EYEWITNESS IDENTIFICATION

You have heard testimony of eyewitness identification. In deciding how much weight to give to this testimony, you may consider the various factors mentioned in these instructions concerning credibility of witnesses.

In addition to those factors, in evaluating eyewitness identification testimony, you may also consider:

1. The capacity and opportunity of the eyewitness to observe the offender based upon the length of time for observation and the conditions at the time of observation, including lighting and distance.
2. Whether the identification was the product of the eyewitness's own recollection or was the result of influence or suggestiveness.
3. The circumstances under which the defendant was presented to the eyewitness for identification.
4. Any inconsistent identifications made by the eyewitness.
5. Any instance in which the eyewitness did not make an identification when given the opportunity to do so.
6. The witness's familiarity with the subject identified.
7. Lapses of time between the event and the identifications.
8. Whether the eyewitness and the offender are of different races or ethnic groups, and whether this may have affected the accuracy of the identification.
9. The totality of circumstances surrounding the eyewitness's identification.

RULES FOR DELIBERATION

These are some general rules that apply to your discussion. You must follow these rules in order to return a lawful verdict:

1. You must follow the law as it is set out in these instructions. If you fail to follow the law, your verdict will be a miscarriage of justice. There is no reason for failing to follow the law in this case. All of us are depending upon you to make a wise and legal decision in this matter.
2. This case must be decided only upon the evidence that you have heard from the testimony of the witnesses and have seen in the form of the exhibits in evidence and these instructions.
3. This case must not be decided for or against anyone because you feel sorry for anyone, or are angry at anyone.
4. Remember, the lawyers are not on trial. Your feelings about them should not influence your decision in this case.
5. Your duty is to determine if the defendant has been proven guilty or not, in accord with the law. It is the judge's job to determine a proper sentence if the defendant is found guilty.
6. Whatever verdict you render must be unanimous, that is, each juror must agree to the same verdict.
7. The jury is not to discuss any question that a juror wrote that was not asked by the court, and must not hold that against either party.
8. Your verdict should not be influenced by feeling of prejudice, bias, or sympathy. Your verdict must be based on the evidence, and on the law contained in these instructions.

CAUTIONARY INSTRUCTIONS

Deciding a verdict is exclusively your job. I cannot participate in that decision in any way. Please disregard anything I may have said or done that made you think I preferred one verdict over another.

VERDICT

You may find the defendant guilty as charged in the information or guilty of such lesser included crimes as the evidence may justify or not guilty.

If you return a verdict of guilty, it should be for the highest offense which has been proven beyond a reasonable doubt. If you find that no offense has been proven beyond a reasonable doubt, then of course, your verdict must be not guilty.

Only one verdict may be returned as to each crime charged. This verdict must be unanimous, that is, all of you must agree to the same verdict. The verdict must be in writing and for your convenience the necessary forms of verdicts have been prepared for you. They are as follows:

SINGLE DEFENDANT, MULTIPLE COUNTS OR INFORMATIONS

A separate crime is charged in each count and although they have been tried together, each crime and the evidence applicable to it must be considered separately and a separate verdict returned as to each. A finding of guilty or not guilty as to one crime must not affect your verdict as to the other crimes charged.

SUBMITTING CASE TO JURY

In just a few moments you will be taken to the jury room by the court deputy. The first thing you should do is choose a foreperson who will preside over your deliberations. The foreperson should see to it that your discussions are carried on in an organized way and that everyone has a fair chance to be heard. It is also the foreperson's job to sign and date the verdict form when all of you have agreed on a verdict and to bring the verdict form back to the courtroom when you return.

During deliberations, jurors must communicate about the case only with one another and only when all jurors are present in the jury room. You are not to communicate with any person outside the jury about this case. Until you have reached a verdict, you must not talk about this case in person or through the telephone, writing, or electronic communication, such as a blog, twitter, e-mail, text message, or any other means. Do not contact anyone to assist you during deliberations. These communications rules apply until I discharge you at the end of the case. If you become aware of any violation of these instructions or any other instruction I have given in this case, you must tell me by giving a note to the court deputy.

If you need to communicate with me, send a note through the court deputy, signed by the foreperson. If you have questions, I will talk with the attorneys before I answer, so it may take some time. You may continue your deliberations while you wait for my answer. I will answer any questions, if I can, in writing or orally here in open court.

Your verdict finding the defendant either guilty or not guilty must be unanimous. The verdict must be the verdict of each juror, as well as of the jury as a whole.

During the trial, items were received into evidence as exhibits. You may examine whatever exhibit you think will help you in your deliberations. These exhibits will be sent into the jury room with you when you begin to deliberate except for the firearm and live ammunition. If you wish to see those exhibits, please request that in writing.

In closing, let me remind you that it is important that you follow the law spelled out in these instructions in deciding your verdict. There are no other laws that apply to this case. Even if you do not like the laws that must be applied, you must use them. For two centuries we have lived by the constitution and the law. No juror has the right to violate rules we all share.