

Final Jury Instructions



Hon. Sherry K. Stephens
Judge of the Superior Court

State of Arizona

v.

JODI ANN ARIAS
CR2008-031021-001

Not Guilty/Guilty Phase

DUTY OF JURY

It is your duty as a juror to decide this case by applying these jury instructions to the facts as you determine them. You must follow these jury instructions. They are the rules you should use to decide this case.

It is your duty to determine what the facts are in the case by determining what actually happened. Determine the facts only from the evidence produced in court. When I say “evidence,” I mean the testimony of witnesses and the exhibits introduced in court. You should not guess about any fact. You must not be influenced by sympathy or prejudice. You must not be concerned with any opinion that you feel I have about the facts. You, as jurors, are the sole judges of what happened.

You must consider all these instructions. Do not pick out one instruction, or part of one, and ignore the others. As you determine the facts, however, you may find that some instructions no longer apply. You must then consider the instructions that do apply, together with the facts as you have determined them.

LAWYERS COMMENTS ARE NOT EVIDENCE

In their opening statements and closing arguments, the lawyers have talked to you about the law and the evidence. What the lawyers said is not evidence, but it may help you to understand the law and the evidence.

STIPULATIONS

During the trial, the lawyers are permitted to stipulate that certain evidence exists. This means both sides agree that evidence exists and is to be considered by you during your deliberations at the conclusion of the

trial. You are to treat a stipulation as any other evidence. You are free to accept it or reject it, in whole or in part, just as any other evidence.

EVIDENCE TO BE CONSIDERED

You are to determine what the facts in the case are from the evidence produced in court. If the court sustained an objection to a lawyer's question, you must disregard it and any answer given. Any testimony stricken from the court record must not be considered.

PRESUMPTION OF INNOCENCE

The law does not require a defendant to prove innocence. Every defendant is presumed by law to be innocent. You must start with the presumption that the defendant is innocent.

BURDEN OF PROOF

The State has the burden of proving the defendant guilty beyond a reasonable doubt. This means the State must prove each element of each charge beyond a reasonable doubt. In civil cases, it is only necessary to prove that a fact is more likely true than not or that its truth is highly probable. In criminal cases such as this, the State's proof must be more powerful than that. It must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every 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 her guilty. If, on the other hand,

you think there is a real possibility that she is not guilty, you must give her the benefit of the doubt and find her not guilty.

VOLUNTARINESS OF DEFENDANT'S STATEMENTS

You must not consider any statements made by the defendant to a law enforcement officer unless you determine beyond a reasonable doubt that the defendant made the statements voluntarily.

A defendant's statement was not voluntary if it resulted from the defendant's will being overcome by a law enforcement officer's use of any sort of violence, coercion, or threats, or by any direct or implied promise, however slight.

You must give such weight to the defendant's statement as you feel it deserves under all the circumstances.

JURY NOT TO CONSIDER THE PENALTY

You must decide whether the defendant is guilty or not guilty by determining what the facts in the case are and applying these jury instructions.

You must not consider the possible punishment when deciding on guilt.

EVIDENCE OF ANY KIND

The State must prove guilt beyond a reasonable doubt based on the evidence. The defendant is not required to produce evidence of any kind. The decision on whether to produce any evidence is left to the defendant acting with the advice of an attorney. The defendant's decision not to produce any evidence is not evidence of guilt.

CREDIBILITY OF WITNESSES

In deciding the facts of this case, you should consider what testimony to accept, and what to reject. You may accept everything a witness says, or part of it, or none of it.

In evaluating testimony, you should use the tests for truthfulness that people use in determining matters of importance in everyday life, including such factors as: the witness's ability to see or hear or know the things the witness testified to; the quality of the witness's memory; the witness's manner while testifying; whether the witness had any motive, bias, or prejudice; whether the witness was contradicted by anything the witness said or wrote before trial, or by other evidence; and the reasonableness of the witness's testimony when considered in the light of the other evidence.

Consider all of the evidence in the light of reason, common sense, and experience.

INDICTMENT IS NOT EVIDENCE

The State has charged the defendant with certain crimes. A charge is not evidence against the defendant. You must not think that the defendant is guilty just because of a charge. The defendant has pled "not guilty."

This plea of "not guilty" means that the State must prove each element of the charge beyond a reasonable doubt.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

Evidence may be direct or circumstantial. Direct evidence is the testimony of a witness who saw, heard, or otherwise sensed an event. Circumstantial evidence is the proof of a fact or facts from which you may

find another fact. The law makes no distinction between direct and circumstantial evidence. It is for you to determine the importance to be given to the evidence, regardless of whether it is direct or circumstantial.

EXPERT WITNESS

A witness qualified as an expert by education or experience may state opinions on matters in that witness's field of expertise, and may also state reasons for those opinions.

Expert opinion testimony should be judged just as any other testimony. You are not bound by it. You may accept it or reject it, in whole or in part, and you should give it as much credibility and weight as you think it deserves, considering the witness's qualifications and experience, the reasons given for the opinions, and all the other evidence in the case.

OTHER ACTS

Evidence of other acts has been presented. You may consider these acts only if you find that the State has proved by clear and convincing evidence that the defendant committed these acts. You may only consider these acts to establish the defendant's motive, intent, preparation or plan. You must not consider these acts to determine the defendant's character or character trait, or to determine that the defendant acted in conformity with the defendant's character or character trait and therefore committed the charged offense.

TESTIMONY OF LAW ENFORCEMENT OFFICERS

The testimony of a law enforcement officer is not entitled to any greater or lesser importance or believability merely because of the fact that

the witness is a law enforcement officer. You are to consider the testimony of a police officer just as you would the testimony of any other witness.

DEFENDANT'S TESTIMONY

You must evaluate the defendant's testimony the same as any witness' testimony.

MOTIVE

The State need not prove motive, but you may consider motive or lack of motive in reaching your verdict.

THE CHARGED OFFENSE – PREMEDITATED MURDER

Count 1 charges the defendant with First Degree Murder. Arizona law recognizes two types of First Degree Murder – Premeditated Murder and Felony Murder. The state has charged the defendant with both types.

The crime of First Degree Premeditated Murder requires the state to prove the following:

1. The defendant caused the death of another person; *and*
2. The defendant intended or knew that she would cause the death of another person; *and*
3. The defendant acted with premeditation.

“Premeditation” means that the defendant intended to kill another human being or knew she would kill another human being; and that after forming that intent or knowledge, reflected on the decision before killing. It

is this reflection, regardless of the length of time in which it occurs, that distinguishes First Degree Murder from Second Degree Murder. While reflection is required for First Degree Murder, the time needed for reflection is not necessarily prolonged, and the space of time between the intent or knowledge to kill and the act of killing may be very short. An act is not done with premeditation if it is the instant effect of a sudden quarrel or heat of passion.

The crime of First Degree Premeditated Murder includes the lesser offense of Second Degree Murder. You may consider a lesser offense if either:

1. You find the defendant not guilty of First Degree Premeditated Murder; *or*
2. After full and careful consideration of the facts, you cannot agree on whether to find the defendant guilty or not guilty of First Degree Premeditated Murder.

You cannot find the defendant guilty of any offense unless you find that the State has proved each element of that offense beyond a reasonable doubt.

SECOND DEGREE MURDER

The crime of Second Degree Murder requires proof of one of the following:

1. The defendant intentionally caused the death of another person; *or*
2. The defendant caused the death of another person by conduct which the defendant knew would cause death or serious physical injury; *or*

3. Under circumstances manifesting extreme indifference to human life, the defendant recklessly engaged in conduct that created a grave risk of death and thereby caused the death of another person. The risk must be such that disregarding it was a gross deviation from what a reasonable person in the defendant's situation would have done.

The difference between first degree murder and second degree murder is that second degree murder does not require premeditation by the defendant.

If you determine that the defendant is guilty of either first degree murder or second degree murder and you have a reasonable doubt as to which it was, you must find the defendant guilty of second degree murder.

**MANSLAUGHTER BASED ON EXISTENCE OF
SUDDEN QUARREL OR HEAT OF PASSION:**

If, and only if, you find the elements of Second Degree Murder were proven beyond a reasonable doubt, you must then consider whether the homicide was committed upon a sudden quarrel or heat of passion resulting from adequate provocation by the victim.

"Adequate provocation" means conduct or circumstances sufficient to deprive a reasonable person of self-control. Words alone are not adequate provocation to justify reducing an intentional killing to Manslaughter. There must not have been a "cooling off" period between the provocation and the killing. A "cooling off" period is the time it would take a reasonable person to regain self-control under the circumstances.

If, after finding the elements of Second Degree Murder were proven beyond a reasonable doubt, you also unanimously find beyond a reasonable doubt that the homicide was not committed upon a sudden quarrel or heat of passion resulting from adequate provocation by the victim, then you must find the defendant guilty of Second Degree Murder.

If, after finding the elements of Second Degree Murder were proven beyond a reasonable doubt, you also unanimously find beyond a reasonable doubt that the homicide was committed upon a sudden quarrel or heat of passion resulting from adequate provocation by the victim, then you must find the defendant not guilty of Second Degree Murder but guilty of Manslaughter.

If you determine that the defendant is guilty of either Second Degree Murder or Manslaughter but you have a reasonable doubt as to which it was, you must find the defendant guilty of Manslaughter.

The defendant cannot be guilty of both Second Degree Murder and Manslaughter.

CHARGED OFFENSE – FELONY MURDER

As stated earlier, Count 1 also charges defendant with First Degree Felony Murder. The crime of First Degree Felony Murder requires the state to prove the following two things:

1. The defendant committed or attempted to commit Burglary in the Second Degree; *and*

2. In the course of and in furtherance of committing Burglary in the Second Degree, or immediate flight from it, the defendant caused the death of any person.

An “attempt” requires the state to prove that the defendant intentionally did something which, under the circumstances she believed them to be, was a step in a course of conduct planned to culminate in the commission of the offense.

The crime of Burglary in the Second Degree requires proof that the defendant:

1. Entered or remained unlawfully in or on a residential structure; *and*
2. Did so with the intent to commit any theft or felony therein.

Residential structure means any structure, movable or immovable, permanent or temporary, that is adapted for both human residence and lodging whether occupied or not.

“Intentionally” or “with the intent to” means, with respect to a result or to conduct described by a statute defining an offense, that a person’s objective is to cause that result or to engage in that conduct.

There are no lesser included offenses for First Degree Felony Murder.

In order to find defendant guilty of Count 1, it is not necessary that you be unanimous with respect to whether the Defendant is guilty of First Degree Premeditated Murder or First Degree Felony Murder. The only

requirement is that you be unanimous that the Defendant is guilty of First Degree Murder, which can be either First Degree Premeditated Murder or First Degree Felony Murder. If you find the Defendant guilty of First Degree Murder, you must indicate on the verdict form how many of you have found the Defendant guilty of First Degree Premeditated Murder and/or First Degree Felony Murder. By way of example only, the jury can be unanimous as to both theories, or just one theory, or it may be divided.

JUSTIFICATION FOR SELF-DEFENSE PHYSICAL FORCE

A defendant is justified in using or threatening deadly physical force in self-defense if the following two conditions existed:

1. A reasonable person in the situation would have believed that deadly physical force was immediately necessary to protect against another's use or apparent attempted or threatened use of unlawful deadly physical force; *and*
2. The defendant used or threatened no more deadly physical force than would have appeared necessary to a reasonable person in the situation.

A defendant may use deadly physical force in self-defense only to protect against another's use or apparent attempted or threatened use of deadly physical force.

Self-defense justifies the use or threat of deadly physical force only while the apparent danger continues, and it ends when the apparent danger ends. The force used may not be greater than reasonably necessary to defend against the apparent danger.

The use of deadly physical force is justified if a reasonable person in the situation would have reasonably believed that immediate deadly physical danger appeared to be present. Actual danger is not necessary to justify the use of deadly physical force in self-defense.

You must decide whether a reasonable person in a similar situation would believe that:

Deadly physical force was immediately necessary to protect against another's use or threatened use of unlawful deadly physical force.

You must measure the defendant's belief against what a reasonable person in the situation would have believed.

A defendant has no duty to retreat before threatening or using deadly physical force in self-defense if the defendant:

1. Had a legal right to be in the place where the use or threatened deadly physical force in self-defense occurred; and
2. Was not engaged in an unlawful act at the time when the use or threatened deadly physical force in self-defense occurred.

The State has the burden of proving beyond a reasonable doubt that the defendant did not act with such justification. If the State fails to carry this burden, then you must find the defendant not guilty of the charge.

If there have been past acts of domestic violence against the

defendant by the victim, the state of mind of a reasonable person shall be determined from the perspective of a reasonable person who has been a victim of those past acts of domestic violence.

Domestic violence mean any act that is an offense (including assault, aggravated assault, threatening and intimidating, endangerment, sexual assault, or unlawful imprisonment) committed while the victim and perpetrator are in a romantic or sexual relationship. The following factors may be considered in determining whether the relationship between the victim and the perpetrator was/had been a romantic or sexual relationship:

- (a) The type of relationship.
- (b) The length of the relationship.
- (c) The frequency of the interaction between the victim and the perpetrator.
- (d) If the relationship has terminated, the length of time since the termination.

DEFINITIONS

“INTENTIONALLY,” “INTENT,” “INTENDED”

“Intentionally,” “intent,” or “Intended” means that a defendant’s objective is to cause that result or to engage in that conduct.

“INTENT” – INFERENCE

Intent may be inferred from all the facts and circumstances disclosed by the evidence. It need not be established exclusively by direct sensory proof. The existence of intent is one of the questions of fact for your determination.

“KNEW” or “KNOWINGLY”

“Knew” or “knowingly” means that a defendant acted with awareness of or belief in the existence of conduct or circumstances constituting an offense. It does not mean that a defendant must have known that the conduct is forbidden by law.

INCLUDED MENTAL STATES – “KNOWINGLY”

If the State is required to prove that the defendant acted "knowingly," that requirement is satisfied if the State proves that the defendant acted "intentionally."

“RECKLESSLY OR RECKLESS DISREGARD”

“Recklessly” or “reckless disregard” means that a defendant is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be such that disregarding it is a gross deviation from what a reasonable person would do in the situation. A person who creates such a risk but is unaware of such risk solely by reason of voluntary intoxication also acts recklessly with respect to such risk.

“PHYSICAL INJURY”

“Physical injury” means the impairment of physical condition.

“SERIOUS PHYSICAL INJURY”

“Serious Physical Injury” includes physical injury which creates a reasonable risk of death, or which causes serious and permanent

disfigurement, serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb.

“FIREARM”

“Firearm” means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun or other weapon that will expel, is designed to expel or may readily be converted to expel a projectile by the action of an explosive. Firearm does not include a firearm in permanently inoperable condition.

“PHYSICAL FORCE”

“Physical force” means force used upon or directed toward the body of another person and includes confinement, but does not include deadly physical force.

“DEADLY PHYSICAL FORCE”

“Deadly physical force” means either:

1. Force which is used with the purpose of causing death or serious physical injury, *or*
2. Force which in the manner of its use is capable of creating a substantial risk of causing death or serious physical injury.

“UNLAWFUL”

“Unlawful” means contrary to law or, where the context so requires, not permitted by law.

ENDANGERMENT

The crime of endangerment requires proof of the following:

1. The defendant disregarded a substantial risk that his or her conduct would cause physical injury and

2. The defendant's conduct did in fact create a substantial risk of physical injury.

THREATENING OR INTIMIDATING

The crime of threatening or intimidating requires proof that the defendant threatened or intimidated by word or conduct:

1. To cause physical injury to another person; or
2. To cause serious damage to the property of another person.

ASSAULT

The crime of assault requires the proof that the defendant:

1. Intentionally, knowingly, or recklessly caused a physical injury to another person; or
2. Intentionally put another person in reasonable apprehension of immediate physical injury; or
3. Knowingly touched another person with the intent to injure, insult, or provoke that person.

AGGRAVATED ASSAULT

The crime of aggravated assault requires proof of the following:

1. The defendant committed an assault, *and*
2. The assault was aggravated when the defendant caused serious physical injury to another person.

UNLAWFUL IMPRISONMENT

The crime of unlawful imprisonment requires proof that the defendant knowingly restrained another person.

“Restrain” means to restrict a person’s movements without consent, without legal authority, and in a manner that interferes substantially with such person’s liberty, by either moving such person from one place to another or by confining such person. Restraint is without consent if it is accomplished by physical force, intimidation, or deception.

SEXUAL ASSAULT

The crime of sexual assault requires proof that the defendant:

1. Intentionally or knowingly engaged in sexual intercourse or oral sexual contact with another person; **and**
2. Engaged in the act without the consent of the other person; **and**
3. The defendant knew the act was without the consent of the other person.

DEFINITION OF “ORAL SEXUAL CONTACT”

"Oral sexual contact" means oral contact with the penis, vulva or anus.

DEFINITION OF “SEXUAL CONTACT”

"Sexual contact" means any direct or indirect touching, fondling or manipulating of any part of the genitals, anus or female breast by any part of the body or by any object or causing a person to engage in such contact.

DEFINITION OF “SEXUAL INTERCOURSE”

“Sexual intercourse” means penetration into the penis, vulva or anus by any part of the body or by any object or masturbatory contact with the penis or vulva.

DEFINITION OF “WITHOUT CONSENT”

“Without consent” includes any of the following:

1. The victim is coerced by the immediate use or threatened use of force against a person or property.

2. The victim is incapable of consent by reason of mental disorder, mental defect, drugs, alcohol, sleep or any other similar impairment of cognition and such condition is known or should have reasonably been known to the defendant. “Mental defect” means the victim is unable to comprehend the distinctively sexual nature of the conduct or is incapable of understanding or exercising the right to refuse to engage in the conduct with another.

3. The victim is intentionally deceived as to the nature of the act.

4. The victim is intentionally deceived to erroneously believe that the person is the victim’s spouse.

JUROR NOTES

Any notes you may have taken during the trial are not evidence. The only evidence that you are to consider in determining the facts is the testimony of witnesses and exhibits admitted into evidence. Your notes are merely an aid to you for recalling trial testimony and evidence.

ALTERNATE JURORS

The law provides for a jury of twelve persons in a case such as this. As

I stated at the beginning of this case, we have more than twelve jurors so that, if a juror becomes ill or has a personal emergency, the trial can continue without that juror.

In a short time, alternate jurors will be determined by lot in a drawing held in open court. The alternate jurors are still jurors on this case until they are released by court order. Therefore, alternate jurors will remain under the admonition and available to return if needed.

CLOSING INSTRUCTION

The case is now submitted to you for decision. When you go to the jury room you will choose a Foreperson. He or she will preside over your deliberations.

I suggest that you discuss and then set your deliberation schedule. You are in charge of your schedule, and may set and vary it by agreement and the approval of the Court. After you have decided on a schedule, please advise the bailiff.

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a just verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to re-examine your own views and change your opinion if you become convinced that it is wrong. However, you should not change your honest belief concerning the weight or effect of the evidence solely because of the opinions of your fellow jurors, or for the mere purpose of returning a verdict. You are to discuss the case and deliberate only when all jurors are together in the jury room. You are not to discuss the case with each other or anyone else during breaks or recesses. The admonition I have given you

during the trial remains in effect when all of you are not in the jury room deliberating.

After setting your schedule, I suggest that you next review the written jury instructions and verdict forms. It may be helpful for you to discuss the instructions and verdict forms to make sure that you understand them. Again, during your deliberations you must follow the instructions and refer to them to answer any questions about applicable law, procedure and definitions.

Should any of you, or the jury as a whole, have a question for me during your deliberations or wish to communicate with me on any other matter, please utilize the jury question form that we will provide you. Your question or message must be communicated to me in writing and must be signed by you or the Foreperson.

I will consider your question or note and consult with counsel before answering it in writing. I will answer it as quickly as possible. Remember that you are not to tell anyone, including me, how you stand, numerically or otherwise, until after you have reached a verdict or have been discharged.

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone, Blackberry or computer; the internet, any internet service, or any text or instant messaging service; or any internet chat room, blog, or website such as Facebook, My Space, LinkedIn, YouTube or Twitter, to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict.

All twelve of you must agree on each verdict. You must be

unanimous. Once all twelve agree on a verdict, only the Foreperson need sign the verdict forms on the line marked "Foreperson."

You will be given one form of verdict. The verdict form reads as follows and there is no significance to the order in which the options of "guilty" and "not guilty," are listed on the verdict form: