

STATE OF MAJOR CRIMINAL JURY INSTRUCTIONS

Jury Instruction No. 1

Assault – Defined

Defendant is charged in [Count _____ of] the complaint, with the commission of the crime of assault.

[The crime of] [An] assault is an unlawful attempt, coupled with a present ability, to commit a wrongful act by means of physical force upon the person of another.

In order to prove the commission of the crime of assault, each of the following elements must be proved:

1. That an attempt was made to commit a wrongful act by means of physical force upon the person of another,
2. That such attempt was unlawful, and
3. That at the time of such attempt, the person who made the attempt had the present ability to commit such act.

To constitute an assault, it is not necessary that any actual injury be inflicted, it may be considered in connection with other evidence in determining whether an assault was committed and, if so, the nature of the assault.

Jury Instruction No. 2

Assault in the First Degree

Defendant is charged in [Count _____ of] the complaint, with the commission of the crime of assault in the first degree.

Every person who commits an assault upon the person of another [with a deadly weapon or instrument] **[or]** [by means of force likely to produce great bodily injury] **[or]** [with a firearm] is guilty of assault in the first degree.

In order to prove the commission of such crime, each of the following elements must be proved:

1. That a person was assaulted, and
2. That the assault was committed [by the use of a deadly weapon or instrument] **[or]** [by means of force likely to produce great bodily injury] **[or]** [with a firearm].

As used in this instruction, a deadly weapon is any object, instrument, or weapon which is used in such a manner as to be capable of producing, and likely to produce, death or great bodily injury.

As used in this instruction, great bodily injury refers to significant or substantial bodily injury or damage; it does not refer to trivial or insignificant injury or moderate harm.

As used in this instruction, firearm includes a _____.

Actual bodily injury is not a necessary element of the crime. If such bodily injury is inflicted, its nature and extent are to be considered in connection with all the evidence in determining whether the means used and the manner in which it was used were such that they were likely to produce great bodily injury.

Jury Instruction No. 3

Insulting Words – Not Justification for Assault

No words of abuse, insult or reproach addressed to a person or uttered concerning him, howsoever insulting or objectionable the words may be, if unaccompanied by any threat or apparent threat of great bodily injury or any assault upon the person or any trespass against lands or goods, will justify him in an assault [with a deadly weapon] **[or]** [by any means of force likely to produce great bodily injury], and the provocation only of such words will not constitute a defense to a charge of having committed an assault.

Jury Instruction No. 4

Deliberate and Premeditated Murder

All murder which is perpetrated by any kind of willful, deliberate and premeditated killing with express malice aforethought is murder of the first degree.

The word “willful,” as used in this instruction, means intentional.

The word “deliberate” means formed or arrived at or determined upon as a result of careful thought and weighing of considerations for and against the proposed course of action. The word “premeditated” means considered beforehand.

If you find that the killing was preceded and accompanied by a clear, deliberate intent on the part of the defendant to kill, which was the result of deliberation and premeditation, so that it must have been formed upon preexisting reflection and not under a sudden heat of passion or other condition precluding the idea of deliberation, it is murder of the first degree.

The law does not undertake to measure in units of time the length of the period during which the thought must be pondered before it can ripen into an intent to kill which is truly deliberate and premeditated. The time will vary with different individuals and under varying circumstances.

The true test is not the duration of time, but rather the extent of reflection. A cold, calculated judgment and decision may be arrived at in a short period of time, but a mere unconsidered and rash impulse, even though it includes an intent to kill, is not such deliberation and premeditation as will fix an unlawful killing as murder of the first degree.

To constitute a deliberate and premeditated killing, the slayer must weigh and consider the question of killing and the reasons for and against such a choice and, having in mind the consequences, he decides to and does kill.

Jury Instruction No. 5

First-Degree Felony-Murder

The unlawful killing of a human being, whether intentional, unintentional or accidental, which occurs as a result of the commission of or attempt to commit the crime of [robbery, burglary, rape, arson] and where there was in the mind of the perpetrator the specific intent to commit such crime, is murder in the first degree.

The specific intent to commit [robbery, burglary, rape, arson] and the commission or attempt to commit such crime must be proved beyond a reasonable doubt.

Jury Instruction No. 6

Unpremeditated Murder of the Second Degree

Murder of the second degree is [also] the unlawful killing of a human being with malice aforethought when there is manifested an intention unlawfully to kill a human being but the evidence is insufficient to establish deliberation and premeditation.

Jury Instruction No. 7

Second-Degree Murder – Killing Resulting from Unlawful Act Dangerous to Life

Murder of the second degree is [also] the unlawful killing of a human being as the direct causal result of an intentional act, [involving a high degree of probability that it will result in death, which act is done for a base, antisocial purpose and with wanton disregard for human life.] [or] [the natural consequences of which are dangerous to life, which act was deliberately performed by a person who knows that his conduct endangers the life of another and who acts with conscious disregard for human life.]

When the killing is the direct result of such an act, it is not necessary to establish that the defendant intended that his act would result in the death of a human being.

Jury Instruction No. 8

Second-Degree Felony-Murder

The unlawful killing of a human being, whether intentional, unintentional or accidental, which occurs as a direct causal result of the commission of or attempt to commit a felony inherently dangerous to human life, namely, the crime of [list crime other than one of those enumerated for first-degree felony-murder] and where there was in the mind of the perpetrator the specific intent to commit such crime, is murder of the second degree.

The specific intent to commit _____ and the commission of or attempt to commit such crime must be proven beyond a reasonable doubt.

Jury Instruction No. 9

Voluntary Manslaughter – Defined

Defendant is charged in [Count _____ of] the complaint with the commission of the crime of voluntary manslaughter.

The crime of voluntary manslaughter is the unlawful killing of a human being without malice aforethought when there is an intent to kill.

There is no malice aforethought if the killing occurred upon a sudden quarrel or heat of passion.

In order to prove the commission of the crime of voluntary manslaughter, each of the following elements must be proven:

1. That a human being was killed,
2. That the killing was unlawful, and
3. That the killing was done with the intent to kill.

Jury Instruction No. 10

Sudden Quarrel or Heat of Passion and Provocation Explained

To reduce an intentional felonious homicide from the offense of murder to manslaughter upon the ground of sudden quarrel or heat of passion, the provocation must be of such character and degree as naturally would excite and arouse such passion, and the assailant must act under the smart of that sudden quarrel or heat of passion.

The heat of passion which will reduce a homicide to manslaughter must be such a passion as naturally would be aroused in the mind of an ordinary reasonable person in the same circumstances. A defendant is not permitted to set up his own standard of conduct and to justify or excuse himself because his passions were aroused unless the circumstances in which he was placed and the facts that confronted him were such as also would have aroused the passion of the ordinary reasonable man faced with the same situation. The question to be answered is whether or not, at the time of the killing, the reason of the accused was obscured or disturbed by passion to such an extent as would cause the ordinarily reasonable person of average disposition to act rashly and without deliberation and reflection, and from such passion rather than from judgment.

If there was provocation, but of a nature not normally sufficient to arouse passion, or if sufficient time elapsed between provocation and the fatal blow for passion to subside and reason to return, and if an unlawful killing of a human being followed such provocation and had all the elements of murder, as it has been defined in these instructions, there mere fact of slight or remote provocation will not reduce the offense to manslaughter.

Jury Instruction No. 11

Involuntary Manslaughter – Defined

Defendant is charged in [Count _____ of] the complaint, with the commission of the crime of involuntary manslaughter.

Involuntary manslaughter is the unlawful killing of a human being without malice aforethought and without intent to kill.

In order to prove the commission of the crime of involuntary manslaughter, each of the following elements must be proven:

1. That a human being was killed, and
2. That the killing was unlawful.

A killing is unlawful within the meaning of this instruction if it occurred:

1. During the commission of a misdemeanor which is inherently dangerous to human life, namely the offense(s) of _____; or
2. In the commission of an act ordinarily lawful which involves a high degree of risk of death or great bodily harm, without due caution and circumspection.

Jury Instruction No. 12

Homicide – Proximate Cause – Definition

To constitute [murder] [or] [manslaughter] [or] [negligent homicide], there must be a causal connection between the death of a human being and the criminal conduct of a defendant so that the act [done] [or] [omitted] was a proximate cause of the resulting death.

The term “proximate cause” means a cause which, in a direct sequence, unbroken by any new independent cause, produces the death, and without which the death would not have happened.

There may be more than one proximate cause of a death.

Jury Instruction No. 13

Homicide – Effect of Improper Treatment

Where the original injury is a proximate cause of the death, the fact that the immediate cause of death was the medical or surgical treatment administered or that such treatment was a factor contributing to the cause of death will not relieve the person who inflicted the original injury from responsibility.

Where, however, the original injury is not a proximate cause of the death and the death was proximately caused by such medical or surgical treatment or some other cause, then the defendant is not guilty of an unlawful homicide.

Jury Instruction No. 14

Burden of Proof – Presumption of Innocence – Reasonable Doubt

The defendant has entered a plea of not guilty. That plea puts in issue every element of the crime charged. The state is the plaintiff and has the burden of proving each element of the crime beyond a reasonable doubt.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless you find it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly and carefully considering all of the evidence or lack of evidence. If, after such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

Jury Instruction No. 15

Self-Defense Against Assault

It is lawful for a person who is being assaulted to defend himself from attack if, as a reasonable person, he has grounds for believing and does believe that bodily injury is about to be inflicted upon him. In doing so he may use all force and means which he believed to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent.

Jury Instruction No. 16

Justifiable Homicide – Defense of Self and Others

It is a defense to a charge of [murder] [or] [manslaughter] that the homicide was justifiable as defined in this instruction.

Homicide is justifiable when committed in the lawful defense of [the slayer] [the slayer's [husband] [wife] [parent] [child] [brother] [sister]] [any person in the slayer's presence or company] when the slayer reasonably believed that the person slain intended to inflict death or great bodily harm and there was imminent danger of such harm being accomplished.

The slayer may employ such force and means as a reasonably prudent person would use under the same or similar conditions as they appeared to the slayer at the time.

Jury Instruction No. 17

Self-Defense by an Aggressor

The right of self-defense is not immediately available to a person who was originally an assailant, but such person must really and in good faith endeavor to decline further combat and fairly and clearly inform his adversary of his desire for peace and that he has abandoned the contest. After such steps have been taken, if his opponent continues the fight, the rights of the person who was the original assailant, with respect to self-defense, are then the same as the rights of any person assailed by another.

Jury Instruction No. 18

Self-Defense – Actual Danger Not Necessary

Actual danger is not necessary to justify self-defense. If one is confronted by the appearance of danger which arouses in his mind, as a reasonable person, an honest conviction and fear that he is about to suffer bodily injury, and if a reasonable person in a like situation, seeing and knowing the same facts, would be justified in believing himself in like danger, and if the person so confronted acts in self-defense upon such appearances and from such fear and honest conviction, his right of self-defense is the same whether such danger is real or merely apparent.

Jury Instruction No. 19

Insanity at Time of Offense – Definition

In addition to the plea of not guilty, the defendant has entered a plea of insanity existing at the time of the act charged.

Insanity existing at the time of the commission of the act charged is a defense.

For a defendant to be found not guilty by reason of insanity you must find that, as a result of mental disease or defect, the defendant's mind was affected to such an extent that the defendant was unable to perceive the nature and quality of the acts with which the defendant is charged or was unable to tell right from wrong with reference to the particular acts with which defendant is charged.

Jury Instruction No. 20

Insanity – Burden of Proof

The burden is on the defendant to establish the defense of insanity by a preponderance of the evidence.

Preponderance of the evidence means that you must be persuaded, considering all the evidence in the case, that the proposition on which that party has the burden of proof is more probably true than not true.

If you find that the defendant has established this defense, it will be your duty to return a verdict of not guilty by reason of insanity.

Jury Instruction No. 21

Duress – Defense

Duress is a defense to a criminal charge if the defendant participated in the crime under compulsion by threat or use of force which created an apprehension in the mind of the defendant that in case of refusal [the defendant] **[or]** [another person] would be liable to immediate death or immediate grievous bodily harm and if such apprehension by the defendant was reasonable and if the defendant would not have participated in the crime except for the duress involved.

The defense of duress is not available if the defendant intentionally or recklessly placed himself or herself in a situation in which it was probable that he or she would be subject to duress.

The burden of proof as to the defense of duress is on the defendant. This burden is satisfied if you have a reasonable doubt as to the defendant's guilt based on the evidence of duress.

Jury Instruction No. 22

Intoxication – Defense

No act committed by a person while in a state of voluntary intoxication is less criminal by reason of that condition, but whenever the actual existence of any particular mental state is a necessary element to constitute a particular kind or degree of crime, the fact of intoxication may be taken into consideration in determining such mental state.

Jury Instruction No. 23

Voluntary Intoxication – When Relevant to Specific Intent

In the crime of _____ of which the defendant is accused in [Count _____ of] the complaint, a necessary element is the existence in the mind of the defendant of the [specific intent to _____] **[or]** [mental state of _____].

If the evidence shows that the defendant was intoxicated at the time of the alleged offense, the jury should consider his state of intoxication in determining if defendant had such [specific intent] **[or]** [mental state].

If from all the evidence you have a reasonable doubt whether defendant formed such [specific intent] **[or]** [mental state], you must give the defendant the benefit of that doubt and find that he did not have such [specific intent] **[or]** [mental state].

Jury Instruction No. 24

Involuntary Intoxication – Consideration

Intoxication is involuntary when it is produced in a person without his willing and knowing use of intoxicating liquor, drugs or other substance and without his willing assumption of the risk of possible intoxication.

Proof of the involuntary intoxication of a defendant should be considered in determining whether the defendant had the necessary [criminal intent] **[or]** [mental state] at the time the crime is alleged to have been committed.