

SET 27.02

Instructions Included within Set 27.02:

- 1.01 Functions of Court and Jury
- 1.02 Jury Sole Judges of Believability
- 1.03 Arguments of Counsel
- 2.01A Charge Against Defendant--1st and 2nd Degree Murder--Jury Not Instructed on Other Charges
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- 26.02 Verdict Form--Not Guilty
- 26.05 Verdict Form--Guilty of 1st Degree Murder
- 26.05 Verdict Form--Guilty of 2nd Degree Murder

In the second case (Set 27.02), the defendant, Samuel Jones, is charged in Cook County with attempt first degree murder and armed robbery of William Smith. Smith testifies that Jones and some others viciously beat Smith, hit him with a stick, and robbed him. At the time of the crime, Smith gives a vague description of the offender, but immediately identifies Jones in a line-up conducted four weeks later. Jones testifies that he was somewhere else at the time of the robbery. An alleged accomplice, who is impeached by a prior inconsistent statement, testifies as a prosecution witness that he helped Jones commit the offense. The State has told the accomplice it will recommend he receive probation in return for his testimony.

The defendant has been impeached with his prior conviction of burglary. The defendant's car was observed speeding away from the scene of the robbery. Arnold Davis testifies for the defense that the defendant loaned Davis the defendant's car on the night of the beating. However, Davis identifies a written statement he gave to the police in which he made no mention of borrowing the defendant's car on the night in question and in which he said he saw the defendant driving the defendant's car shortly after the time of the robbery.

The alleged victim had numerous interviews with the prosecutor, but declined to speak to defense counsel. The defendant's alibi witnesses declined to speak to the prosecutor. Because defense counsel argues that the stick was not a dangerous weapon, the court instructs the jury on the lesser included offense of robbery. Because the beating occurred in a wooded area near the county line, an issue arises concerning venue.

27.02 Attempt First Degree Murder--Armed Robbery--Robbery Given As Lesser Included Offense--Accomplice Testimony--Prior Inconsistent Statements--Defendant With Prior Record--Venue At Issue--(Defendant Is Samuel Jones)

Members of the jury, the evidence and arguments in this case have been completed, and I now will instruct you as to the law.

The law that applies to this case is stated in these instructions, and it is your duty to follow all of them. You must not single out certain instructions and disregard others.

It is your duty to determine the facts and to determine them only from the evidence in this case. You are to apply the law to the facts and in this way decide the case.

Neither sympathy nor prejudice should influence you.

From time to time it has been the duty of the court to rule on the admissibility of evidence. You should not concern yourselves with the reasons for these rulings. You should disregard questions and exhibits which were withdrawn or to which objections were sustained.

Any evidence that was received for a limited purpose should not be considered by you for any other purpose.

You should disregard testimony and exhibits which the court has refused or stricken.

The evidence which you should consider consists only of the testimony of the witnesses and the exhibits which the court has received.

You should consider all the evidence in the light of your own observations and experience in life.

Neither by these instructions nor by any ruling or remark which I have made do I mean to indicate any opinion as to the facts or as to what your verdict should be.

Faithful performance by you of your duties as jurors is vital to the administration of justice.

[1.02]

Only you are the judges of the believability of the witnesses and of the weight to be given to the testimony of each of them. In considering the testimony of any witness, you may take into account his ability and opportunity to observe, his memory, his manner while testifying, any interest, bias, or prejudice he may have, and the reasonableness of his testimony considered in the light of all the evidence in the case.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

[1.03]

Opening statements are made by the attorneys to acquaint you with the facts they expect to prove. Closing arguments are made by the attorneys to discuss the facts and circumstances in the case and should be confined to the evidence and to reasonable inferences to be drawn from the evidence. Neither opening statements nor closing arguments are evidence, and any statement or argument made by the attorneys which is not based on the evidence should be disregarded.

[2.01R]

The defendant is charged with the offense of armed robbery. The defendant has pleaded not guilty. Under the law, a person charged with armed robbery may be found (1) not guilty of armed robbery and not guilty of robbery; or (2) guilty of armed robbery; or (3) guilty of robbery.

The defendant is also charged with the offense of attempt first degree murder. The defendant has pleaded not guilty.

[2.02]

The charges against the defendant in this case are contained in a document called the information. This document is the formal method of charging the defendant and placing the defendant on trial. It is not any evidence against the defendant.

[2.03]

The defendant is presumed to be innocent of the charges against him. This presumption remains with him throughout every stage of the trial and during your deliberations on the verdict and is not overcome unless from all the evidence in this case you are convinced beyond a reasonable doubt that the defendant is guilty.

The State has the burden of proving the guilt of the defendant beyond a reasonable doubt, and this burden remains on the State throughout the case. The defendant is not required to prove his innocence.

[3.02]

Circumstantial evidence is the proof of facts or circumstances which give rise to a reasonable inference of other facts which tend to show the guilt or innocence of the defendant. Circumstantial evidence should be considered by you together with all the other evidence in the case in arriving at your verdict.

[3.10]

It is proper for an attorney to interview or attempt to interview a witness for the purpose of learning the testimony the witness will give.

However, the law does not require a witness to speak to an attorney before testifying.

[3.11]

The believability of a witness may be challenged by evidence that on some former occasion he made a statement that was not consistent with his testimony in this case. Evidence of this kind ordinarily may be considered by you only for the limited purpose of deciding the weight to be given the testimony you heard from the witness in this courtroom.

However, you may consider a witness's earlier inconsistent statement as evidence without this limitation when the statement narrates, describes, or explains an event or condition the witness had personal knowledge of; and

the statement was written or signed by the witness, or

the witness acknowledged under oath that he made the statement.

It is for you to determine what weight should be given to that statement. In determining the weight to be given to an earlier statement, you should consider all of the circumstances under which it was made.

[3.13]

Evidence of a defendant's previous conviction of an offense may be considered by you only as it may affect his believability as a witness and must not be considered by you as evidence of his guilt of the offense with which he is charged.

[3.15]

When you weigh the identification testimony of a witness, you should consider all the facts and circumstances in evidence, including, but not limited to, the following:

The opportunity the witness had to view the offender at the time of the offense.

The witness's degree of attention at the time of the offense.

The witness's earlier description of the offender.

The level of certainty shown by the witness when confronting the defendant.

The length of time between the offense and the identification confrontation.

[3.17]

When a witness says he was involved in the commission of a crime with the defendant, the testimony of that witness is subject to suspicion and should be considered by you with caution. It should be carefully examined in light of the other evidence in the case.

[4.17]

An object or an instrument which is not inherently dangerous may be a dangerous weapon depending on the manner of its use and the circumstances of the case.

[6.05X]

A person commits the offense of attempt first degree murder when he, with the intent to kill an individual, does any act which constitutes a substantial step toward the killing of an individual.

The killing attempted need not have been accomplished.

[5.03]

A person is legally responsible for the conduct of another person when, either before or during the commission of an offense, and with the intent to promote or facilitate the commission of an offense, he knowingly solicits, aids, abets, agrees to aid, or attempts to aid the other person in the planning or commission of an offense.

The word “conduct” includes any criminal act done in furtherance of the planned and intended act.

[6.07X/2.08]

To sustain the charge of attempt first degree murder, the State must prove the following propositions:

First Proposition: That the defendant or one for whose conduct he is legally responsible performed an act which constituted a substantial step toward the killing of an individual; and

Second Proposition: That the defendant or one for whose conduct he is legally responsible did so with the intent to kill an individual.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

[14.05]

A person commits the offense of armed robbery when he, while carrying on or about his person, or while otherwise armed with a dangerous weapon, intentionally takes property from the person or presence of another by the use of force or by threatening the imminent use of force.

[14.06]

To sustain the charge of armed robbery, the State must prove the following propositions:

First Proposition: That the defendant or one for whose conduct he is legally responsible intentionally took property from the person or presence of William Smith; and

Second Proposition: That the defendant or one for whose conduct he is legally responsible did so by the use of force or by threatening the imminent use of force; and

Third Proposition: That the defendant or one for whose conduct he is legally responsible carried on or about his person a dangerous weapon or was otherwise armed with a dangerous weapon at the time of the taking.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

[14.01]

A person commits the offense of robbery when he intentionally takes property from the person or the presence of another by the use of force or by threatening the imminent use of force.

[14.02]

To sustain the charge of robbery, the State must prove the following propositions:

First Proposition: That the defendant or one for whose conduct he is legally responsible intentionally took property from the person or presence of William Smith; and

Second Proposition: That the defendant or one for whose conduct he is legally responsible did so by the use of force or by threatening the imminent use of force.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

[26.01R]

When you retire to the jury room you first will elect one of your members as your foreperson. He or she will preside during your deliberations on your verdict.

Your agreement on a verdict must be unanimous. Your verdict must be in writing and signed by all of you, including your foreperson.

The defendant is charged with the offense of armed robbery. Under the law, a person charged with armed robbery may be found (1) not guilty of armed robbery and not guilty of robbery; or (2) guilty of armed robbery; or (3) guilty of robbery.

Accordingly, you will be provided with three verdict forms pertaining to the charge of

armed robbery: “not guilty of armed robbery and not guilty of robbery”, “guilty of armed robbery”, and “guilty of robbery”.

From these three verdict forms, you should select the one verdict form that reflects your verdict and sign it as I have stated. Do not write on the other two verdict forms. Sign only one of these verdict forms.

The defendant is also charged with the offense of attempt first degree murder. You will receive two forms of verdict as to this charge. You will be provided with both a “not guilty of attempt first degree murder” and a “guilty of attempt first degree murder” form of verdict.

From these two verdict forms, you should select the one verdict form that reflects your verdict pertaining to the charge of attempt first degree murder and sign it as I have stated. You should not write at all on the other verdict form pertaining the charge of attempt first degree murder.

If you find the State has proved the defendant guilty of both armed robbery and robbery, you should select the verdict form finding the defendant guilty of armed robbery and sign it as I have stated. Under these circumstances, do not sign the verdict form finding the defendant guilty of robbery.

[26.02]

We, the jury, find the defendant Samuel Jones not guilty of armed robbery and not guilty of robbery.

Foreperson

[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Samuel Jones guilty of armed robbery.

Foreperson

[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Samuel Jones guilty of robbery.

Foreperson

[Lines for eleven other jurors]

[26.02]

We, the jury, find the defendant Samuel Jones not guilty of attempt first degree murder.

Foreperson

[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Samuel Jones guilty of attempt first degree murder.

Foreperson

[Lines for eleven other jurors]

NOTE: IF THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM IS USED, SLIGHT REVISIONS MUST BE MADE TO THE CONCLUDING INSTRUCTIONS FROM

CHAPTER 26. READ THE “INTRODUCTION” TO THIS CHAPTER FOR DETAILS.

(Set 27.02)

Alternative, Single Page, Multiple Verdict Form

We, the jury, find the defendant:

1. ☐ Samuel Jones not guilty of armed robbery and not guilty of robbery. [26.02]
2. ☐ Samuel Jones guilty of armed robbery. [26.05]
3. ☐ Samuel Jones guilty of robbery. [26.05]

Indicate your unanimous verdict by checking only one of the choices above.

Foreperson

[Lines for eleven other jurors]

(Set 27.02)

Alternative, Single Page, Multiple Verdict Form

We, the jury, find the defendant:

1. ☐ Samuel Jones not guilty of attempt first degree murder. [26.02]
2. ☐ Samuel Jones guilty of attempt first degree murder. [26.05]

Indicate your unanimous verdict by checking only one of the choices above.

Foreperson

[Lines for eleven other jurors]