27.00.

SAMPLE SETS OF INSTRUCTIONS

INTRODUCTION

This chapter consists of seven sets of sample instructions. The court and counsel may wish to vary the order of these instructions to accommodate the needs of a particular case.

The bracketed instruction numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

The committee has determined that in certain circumstances it would be valuable for a trial court to have the option to provide the jury verdict forms for each charge on a single page. The committee believes this will be particularly valuable where the jury is instructed as to lesser-included offenses. The alternative, single page, multiple verdict form is given at the end of each sample set of instructions, following the traditional verdict forms. Thus, the trial court has the option of using either the traditional forms or the new single page multiple verdict forms. However, the committee does recommend that whichever format is used, this same format be used for all verdict forms given to an individual jury.

IF THE TRIAL COURT DECIDES TO USE THE ALTERNATIVE, SINGLE PAGE, MULTIPLE VERDICT FORM, IT WILL BE NECESSARY TO SLIGHTLY REVISE THE INSTRUCTIONS FROM CHAPTER 26. The instructions should be revised to tell the jury that the verdict options appear on one page; that the jury must unanimously agree on one of those options; that the jury should indicate its choice by checking off the appropriate verdict; and that the form should then be signed by the jurors.

SET 27.01

Instructions Included within Set 27.01

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
2.02 Indictment/Information Not Evidence
2.03A Presumption of Innocence--Burden of Proof--1st and 2nd Degree Murder
3.06-3.07 Statements by Defendant
7.01A Definition of 1st Degree Murder
7.05A Definition of Mitigating Factor--2nd Degree Murder--Belief in Justification
24-25.06 Use of Force in Defense of a Person
24-25.09 Initial Aggressor's Use of Force
7.06A Issues Instruction--1st and 2nd Degree Murder--Belief in Justification--Justifiable Use of Force
26.01A Concluding Instruction--1st and 2nd Degree Murder--Jury Not Instructed on Other Charges
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 first case (Set 27.01), the defendant, Arthur Fletcher, is charged with the first degree murder of Ralph Hudson. A police officer testifies that Fletcher admitted killing Hudson, but said nothing about self-defense. The defendant denies making any statement to the police. Fletcher testifies that he shot Hudson, but asserts that he was acting in self-defense. Witnesses for the State testify that Fletcher was the initial aggressor. The court instructs the jury on second degree murder.

27.01 First Degree Murder--Self-Defense--Second Degree Murder--Statement Of The Defendant--(Defendant Is Arthur Fletcher

[1.01]

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.

[2.01A]

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

[2.02]

The charge against the defendant in this case is 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.

[2.03A]

The defendant is presumed to be innocent of the charge against him of first degree murder. 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 that the defendant is guilty of first degree murder, and this burden remains on the State throughout the case. The defendant is not required to prove his innocence.

If the State proves beyond a reasonable doubt that the defendant is guilty of first degree murder, the defendant then has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder, and not guilty of first degree murder. In deciding whether a mitigating factor is present, you should

consider all of the evidence bearing on this question.

[3.06-3.07]

You have before you evidence that the defendant made a statement relating to the offense charged in the information. It is for you to determine whether the defendant made the statement, and, if so, what weight should be given to the statement. In determining the weight to be given a statement, you should consider all of the circumstances under which it was made.

[7.01]

A person commits the offense of first degree murder when he kills an individual without lawful justification if, in performing the acts which cause the death,

he intends to kill or do great bodily harm to that individual;

or

he knows that such acts will cause death to that individual;

or

he knows that such acts create a strong probability of death or great bodily harm to that individual.

[7.05]

A mitigating factor exists so as to reduce the offense of first degree murder to the lesser offense of second degree murder if at the time of the killing the defendant believes that circumstances exist which would justify the deadly force he uses, but his belief that such circumstances exist is unreasonable.

[24-25.06]

A person is justified in the use of force when and to the extent that he reasonably believes that such conduct is necessary to defend himself against the imminent use of unlawful force.

However, a person is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself.

[24-25.09]

A person who initially provokes the use of force against himself is justified in the use of force only if the force used against him is so great that he reasonably believes he is in imminent danger of death or great bodily harm, and he has exhausted every reasonable means to escape the danger other than the use of force which is likely to cause death or great bodily harm to the other person.

[7.06]

To sustain either the charge of first degree murder or the charge of second degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of Ralph Hudson; and

Second Proposition: That when the defendant did so,

he intended to kill or do great bodily harm to Ralph Hudson;

or

he knew that such acts would cause death to Ralph Hudson;

or

he knew that such acts created a strong probability of death or great bodily harm to Ralph Hudson;

and

Third Proposition: That the defendant was not justified in using the force which he used.

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

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that the following mitigating factor is present: that the defendant, at the time he performed the acts which caused the death of Ralph Hudson, believed the circumstances to be such that they justified the deadly force he used, but his belief that such circumstances existed was unreasonable.

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of first degree murder.

[26.01A]

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 first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) guilty of first degree murder; or (3) guilty of second degree murder.

Accordingly, you will be provided with three verdict forms: "not guilty", "guilty of first degree murder", and "guilty of second degree murder".

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 verdict form.

[26.02]

We, the jury, find the defendant Arthur Fletcher not guilty.

_____

Foreperson

[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Arthur Fletcher guilty of 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 27.01)

Alternative, Single Page, Multiple Verdict Form

We, the jury, find the defendant:

1. ____ Arthur Fletcher not guilty. [26.02]
2. ____ Arthur Fletcher guilty of first degree murder. [26.05]
3. ____ Arthur Fletcher guilty of second degree murder. [26.05]

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

_____

Foreperson

[Lines for eleven other jurors]

SET 27.02

Instructions

Included within Set 27.02:

1.01Functions 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
2.02 Indictment/Information Not Evidence
2.03A Presumption of Innocence--Burden of Proof--1st and 2nd Degree Murder
3.06-3.07 Statements by Defendant
7.01A Definition of 1st Degree Murder
7.05A Definition of Mitigating Factor--2nd Degree Murder--Belief in Justification
24-25.06 Use of Force in Defense of a Person
24-25.09 Initial Aggressor's Use of Force
7.06A Issues Instruction--1st and 2nd Degree Murder--Belief in Justification--Justifiable Use of Force
26.01A Concluding Instruction--1st and 2nd Degree Murder--Jury Not Instructed on Other Charges
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)

[1.01]

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. This evidence 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.

[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]

SET 27.03

Instructions Included within Set 27.03

1.01 Functions of Court and Jury

1.02 Jury Sole Judges of Believability

1.03 Arguments of Counsel
2.01 Charge Against Defendant--Multiple Defendants
2.02 Indictment/Information Not Evidence
2.03 Presumption of Innocence--Burden of Proof
3.05 Separate Consideration for Each Defendant
5.03 Accountability
11.55 Definition of Criminal Sexual Assault
11.65E Definition of Sexual Penetration
11.56 Issues Instruction--Criminal Sexual Assault As to Defendant Sidney Sommers
11.56 Issues Instruction--Criminal Sexual Assault As to Defendant Walter Winters
11.63 Defense of Consent
11.63A Definition of Consent
11.61 Definition of Aggravated Criminal Sexual Abuse
11.62A Issues Instruction--Aggravated Criminal Sexual Abuse As to Defendant Sidney Sommers
11.62A Issues Instruction--Aggravated Criminal Sexual Abuse As to Defendant Walter Winters
11.64 Defense to Aggravated Criminal Sexual Abuse
4.13 Definition of Reasonable Belief
26.01 Concluding Instruction--Multiple Defendants
26.02 Verdict Forms--Not Guilty of Criminal Sexual Assault (Sidney Sommers)
26.05 Verdict Form--Guilty of Criminal Sexual Assault (Sidney Sommers)
26.02 Verdict Form--Not Guilty of Aggravated Criminal Sexual Abuse (Sidney Sommers)
26.05 Verdict Form--Guilty of Aggravated Criminal Sexual Abuse (Sidney Sommers)
26.02 Verdict Form--Not Guilty of Criminal Sexual Assault (Walter Winters)
26.05 Verdict Form--Guilty of Criminal Sexual Assault--(Walter Winters)
26.02 Verdict Form--Not Guilty of Aggravated Criminal Sexual Abuse (Walter Winters)
26.05 Verdict Form--Guilty of Aggravated Criminal Sexual Abuse (Walter Winters)

In the third case (Set 27.03), the two defendants, Sidney Sommers and Walter Winters, both 26 years old, are charged in the same information with criminal sexual assault of Ann Strong, a 15-year-old female. A second count charges them with aggravated criminal sexual abuse of the same alleged victim. She testifies that she accepted the defendants' offer of a ride home from a party. She says they pulled into an alley and Winters slapped her once and held her while Sommers forcibly engaged in sexual intercourse with her. The defendants say the girl agreed to the sexual acts that took place. They also testify she said she was 17 years old and that she appeared to be at least that old.

27.03 Criminal Sexual Assault--Aggravated Criminal Sexual Abuse--Two Defendants--Consent--(Defendants Are Sidney Sommers And Walter Winters)

[1.01]

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 or her ability and opportunity to observe, his or her memory, his or her manner while testifying, any interest, bias, or prejudice he or she may have, and the reasonableness of his or her testimony considered in the light of all the evidence in the case.

You should judge the testimony of the defendants 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.

[2.01]

The defendants are charged with the offenses of criminal sexual assault and aggravated criminal sexual abuse. The defendants have pleaded not guilty.

[2.02]

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

[2.03]

Each 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 the 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.

[3.05]

You should give separate consideration to each defendant. Each is entitled to have his case decided on the evidence and the law which applies to him.

Any evidence which was limited to one defendant should not be considered by you as to the other defendant.

[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 the offense, he knowingly solicits, aids, abets, agrees to aid, or attempts to aid the other person in the planning or commission of the offense.

[11.55]

A person commits the offense of criminal sexual assault when he commits an act of sexual penetration upon the victim by the use of force or threat of force.

[11.65E]

The term "sexual penetration" means any intrusion, however slight, of any part of the body of one person into the sex organ of another person. Evidence of emission of semen is not required to prove sexual penetration.

[11.56]

To sustain the charge of criminal sexual assault against the defendant Sidney Sommers, the State must prove the following propositions:

First Proposition: That the defendant, or one for whose conduct he is legally responsible, committed an act of sexual penetration upon Ann Strong; and

Second Proposition: That the act was committed by the use of force or threat of force; and

Third Proposition: That Ann Strong did not consent to the act of sexual penetration.

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.

[11.56]

To sustain the charge of criminal sexual assault against the defendant Walter Winters, the State must prove the following propositions:

First Proposition: That the defendant, or one for whose conduct he is legally responsible, committed an act of sexual penetration upon Ann Strong; and

Second Proposition: That the act was committed by the use of force or threat of force; and

Third Proposition: That Ann Strong did not consent to the act of sexual penetration.

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.

[11.63]

It is a defense to the charge of criminal sexual assault that Ann Strong consented.

[11.63A]

The word "consent" means a freely given agreement to the act of sexual penetration in question. Lack of verbal or physical resistance or submission by the victim resulting from the use of force or threat of force by the defendant shall not constitute consent.

[11.61]

A person commits the offense of aggravated criminal sexual abuse when he commits an act of sexual penetration with a victim who is at least 13 years of age but under 17 years of age when the act is committed and he is at least 5 years older than the victim.

[11.62A]

To sustain the charge of aggravated criminal sexual abuse against the defendant Sidney Sommers, the State must prove the following propositions:

First Proposition: That the defendant, or one for whose conduct he is legally responsible, committed an act of sexual penetration upon Ann Strong; and

Second Proposition: That Ann Strong was at least 13 years of age but under 17 years of age when the act was committed; and

Third Proposition: That the defendant was at least 5 years older than Ann Strong; and

Fourth Proposition: That the defendant did not reasonably believe Ann Strong to be 17 years of age or older.

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.

[11.62A]

To sustain the charge of aggravated criminal sexual abuse against the defendant Walter Winters, the State must prove the following propositions:

First Proposition: That the defendant, or one for whose conduct he is legally responsible, committed an act of sexual penetration upon Ann Strong; and

Second Proposition: That Ann Strong was at least 13 years of age but under 17 years of age when the act was committed; and

Third Proposition: That the defendant was at least 5 years older than Ann Strong; and

Fourth Proposition: That the defendant did not reasonably believe Ann Strong to be 17 years of age or older.

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.

[11.64]

It is a defense to the charge of aggravated criminal sexual abuse that the defendant reasonably believed Ann Strong to be 17 years of age or older.

[4.13]

The phrases "reasonable belief" or "reasonably believes" mean that the person concerned, acting as a reasonable person, believes that the described facts exist.

[26.01]

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 deliberation on your verdicts.

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

The defendants are charged with the offenses of criminal sexual assault and aggravated criminal sexual abuse. You will receive eight forms of verdict. As to each charge and for each defendant, you will be provided with both a "not guilty" and "guilty" form of verdict. From these two verdict forms with regard to a particular charge, you should select the one verdict form that reflects your verdict on that charge as to each defendant and sign it as I have stated. Do not write on the other verdict form on that charge as to that defendant. Sign only one verdict form on that charge as to that defendant.

[26.02]

We, the jury, find the defendant Sidney Sommers not guilty of criminal sexual assault.

_____

Foreperson

_____

[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Sidney Sommers guilty of criminal sexual assault.

_____

Foreperson

_____

[Lines for eleven other jurors]

[26.02]

We, the jury, find the defendant Sidney Sommers not guilty of aggravated criminal sexual abuse.

_____

Foreperson

_____

[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Sidney Sommers guilty of aggravated criminal sexual abuse.

_____

Foreperson

_____

[Lines for eleven other jurors]

[26.02]

We, the jury, find the defendant Walter Winters not guilty of criminal sexual assault.

_____

Foreperson

_____

[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Walter Winters guilty of criminal sexual assault.

_____

Foreperson

_____

[Lines for eleven other jurors]

[26.02]

We, the jury, find the defendant Walter Winters not guilty of aggravated criminal sexual abuse.

_____

Foreperson

_____

[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Walter Winters guilty of aggravated criminal sexual abuse.

_____

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 27.03)

Alternative, Single Page, Multiple Verdict Form

We, the jury, find the defendant:

1. ____ Sidney Sommers not guilty of criminal sexual assault. [26.02]

2. ____ Sidney Sommers guilty of criminal sexual assault. [26.05]
Indicate your unanimous verdict by checking only one of the choices above.

_____
Foreperson

_____
[Lines for eleven other jurors]

(Set 27.03)
Alternative, Single Page, Multiple Verdict Form
We, the jury, find the defendant:
1. ____ Sidney Sommers not guilty of aggravated criminal sexual abuse. [26.02]
2. ____ Sidney Sommers guilty of aggravated criminal sexual abuse. [26.05]
Indicate your unanimous verdict by checking only one of the choices above.

_____
Foreperson

_____
[Lines for eleven other jurors]

(Set 27.03)
Alternative, Single Page, Multiple Verdict Form
We, the jury, find the defendant:
1. ____ Walter Winters not guilty of criminal sexual assault. [26.02]
2. ____ Walter Winters guilty of criminal sexual assault. [26.05]
Indicate your unanimous verdict by checking only one of the choices above.

_____
Foreperson

_____
[Lines for eleven other jurors]

(Set 27.03)
Alternative, Single Page, Multiple Verdict Form We, the jury, find the defendant:
1. ____ Walter Winters not guilty of aggravated criminal sexual abuse. [26.02]
2. ____ Walter Winters guilty of aggravated criminal sexual abuse. [26.05]
Indicate your unanimous verdict by checking only one of the choices above.

_____
Foreperson

_____
[Lines for eleven other jurors]

SET 27.04A

The fourth case (Set 27.04) is designed to demonstrate the utilization of jury instructions when the jury is instructed on the guilty but mentally ill verdict. Set 27.04 has been divided into

Sets 27.04A and 27.04B to demonstrate jury instructions to be used when the jury will be considering only first degree murder and the guilty but mentally ill verdict (Set 27.04A), as opposed to when the jury will be considering both first degree murder and second degree murder, as well as the guilty but mentally ill verdict (Set 27.04B).

Instructions Included within Set 27.04A:

1.01	Functions of Court and Jury
1.02	Jury Sole Judges of Believability
1.03	Arguments of Counsel
2.01AA	Charge Against Defendant--Insanity Defense--Guilty But Mentally Ill Verdict
2.02	Indictment/Information Not Evidence
2.03	Presumption of Innocence--Burden of Proof
2.03B	Presumption of Innocence--Burden of Proof--Insanity Defense
2.04	Failure of Defendant to Testify
7.01A	Definition of 1st Degree Murder
24-25.01	Definition of Insanity
4.18	Definition of Preponderance of Evidence
24-25.01B	Explanation of Guilty But Mentally Ill
24-25.01C	Definition of Mentally Ill
7.02A/24-25.01D	Issues Instruction--1st Degree Murder--Insanity Defense--Guilty But Mentally Ill Verdict
26.01AA	Concluding Instruction--Insanity Defense--Guilty But Mentally Ill Verdict
26.02	Verdict Form--Not Guilty
26.03	Verdict Form--Not Guilty by Reason of Insanity of 1st Degree Murder
26.05	Verdict Form--Guilty of 1st Degree Murder
26.04	Verdict Form--Guilty But Mentally Ill of 1st Degree Murder

In Set 27.04A, the defendant, Thomas Swanson, a black male, is charged with the first degree murder of Henry Carter. The State's evidence shows that the two men had a verbal confrontation before the defendant stabbed Carter 17 times with an ice pick. The defendant puts forth an insanity defense, but does not testify. No defense witness testifies to the events surrounding Carter's death. The court instructs the jury on the guilty but mentally ill verdict.

27.04A First Degree Murder--Insanity Defense--Guilty But Mentally Ill Verdict--(Defendant Is Thomas Swanson)

[1.01]

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. You should not be influenced by any person's race, color, religion, or national ancestry.

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.

[2.01AA]

The defendant is charged with the offense of first degree murder. The defendant has pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) guilty but mentally ill of first degree murder.

[2.02]

The charge against the defendant in this case is 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.

[2.03B]

The defense of insanity has been presented during the trial. The burden of proof is on the defendant to prove by clear and convincing evidence that the defendant is not guilty by reason of insanity. However, the burden remains on the State to prove beyond a reasonable doubt each of the elements of the offense charged. You may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity until and unless it has first been determined that the State has proved the defendant guilty beyond a reasonable doubt of the offense with which he is charged.

[2.04]

The fact that a defendant did not testify must not be considered by you in any way in arriving at your verdict.

[7.01]

A person commits the offense of first degree murder when he kills an individual without lawful justification if, in performing the acts which cause the death,

he intends to kill or do great bodily harm to that individual;

or

he knows that such acts will cause death to that individual;

or

he knows that such acts create a strong probability of death or great bodily harm to that individual.

[24-25.01]

A person is insane and not criminally responsible for his conduct if at the time of the conduct, as a result of mental disease or mental defect, he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law.

[4.18]

The phrase "preponderance of the evidence" means whether, considering all the evidence in the case, the proposition on which the defendant has the burden of proof is more probably true than not true.

[24-25.01B]

A person may be found guilty but mentally ill and is not relieved of criminal

responsibility for his conduct if at the time of the commission of the offense he was not insane but was suffering from a mental illness.

[24-25.01C]

A person is mentally ill if, at the time of the commission of the offense, he was afflicted by a substantial disorder of thought, mood, or behavior which impaired his judgment, but not to the extent that he was unable to appreciate the wrongfulness of his behavior.

[7.02/24-25.01D]

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

First Proposition: That the defendant performed the acts which caused the death of Henry Carter; and

Second Proposition: That when the defendant did so,

he intended to kill or do great bodily harm to Henry Carter;

or

he knew that such acts would cause death to Henry Carter;

or

he knew that such acts created a strong probability of death or great bodily harm to Henry Carter.

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, your deliberations should end, and you should return the verdict of not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether the defendant has proved by clear and convincing evidence that he is not guilty by reason of insanity.

You may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity until and unless you have first determined that the State has proved the defendant guilty beyond a reasonable doubt.

If you find from your consideration of all the evidence that the defendant has proved by clear and convincing evidence that he is not guilty by reason of insanity, your deliberations should end, and you should return the verdict of not guilty by reason of insanity.

If you find from your consideration of all the evidence that the defendant has not proved by clear and convincing evidence that he is not guilty by reason of insanity, then you should continue your deliberations to determine whether the defendant is guilty but mentally ill.

A special verdict of guilty but mentally ill may be returned by you instead of a general verdict of guilty if you find each of the following circumstances to be present in this case:

First: That the State has proved beyond a reasonable doubt that the defendant is guilty of first degree murder; and

Second: That the defendant has not proved by clear and convincing evidence that he was insane at the time he committed the offense of first degree murder; and

Third: That the defendant has proved by a preponderance of the evidence that he was

mentally ill at the time he committed the offense of first degree murder.

If you find from your consideration of all the evidence that each one of these circumstances is present, you may return the special verdict finding the defendant guilty but mentally ill.

If you find from your consideration of all the evidence that the State has proved beyond a reasonable doubt that the defendant is guilty of first degree murder and if you find that either the second or third circumstance concerning the guilty but mentally ill verdict is not present, you should return the general verdict finding the defendant guilty.

[26.01AA]

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 first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) guilty but mentally ill of first degree murder.

Accordingly, you will be provided with four verdict forms: "not guilty", "not guilty by reason of insanity of first degree murder", "guilty of first degree murder", and "guilty but mentally ill of first degree murder".

From these four 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 three verdict forms. Sign only one verdict form.

[26.02]

We, the jury, find the defendant Thomas Swanson not guilty.

_____
Foreperson

_____
[Lines for eleven other jurors]

[26.03]

We, the jury, find the defendant Thomas Swanson not guilty by reason of insanity of first degree murder.

_____
Foreperson

_____
[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Thomas Swanson guilty of first degree murder.

_____
Foreperson

_____
[Lines for eleven other jurors]

[26.04]

We, the jury, find the defendant Thomas Swanson guilty but mentally ill of 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 27.04A)

Alternative, Single Page, Multiple Verdict Form

We, the jury, find the defendant:

1. ____ Thomas Swanson not guilty. [26.02]
2. ____ Thomas Swanson not guilty by reason of insanity of first degree murder. [26.03]
3. ____ Thomas Swanson guilty of first degree murder. [26.05]
4. ____ Thomas Swanson guilty but mentally ill of first degree murder. [26.04]

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

_____
Foreperson

_____
[Lines for eleven other jurors]

SET 27.04B

Instructions Included within Set 27.04B

1.01 Functions of Court and Jury

1.02 Jury Sole Judges of Believability
1.03 Arguments of Counsel
2.01G Charge Against Defendant--1st and 2nd Degree Murder--Insanity Defense--Guilty But Mentally Ill Verdict
2.02 Indictment/Information Not Evidence
2.03A Presumption of Innocence--Burden of Proof--1st and 2nd Degree Murder
2.03B Presumption of Innocence--Burden of Proof--Insanity Defense
2.04 Failure of Defendant to Testify
7.01A Definition of 1st Degree Murder
7.03A Definition of Mitigating Factor--1st and 2nd Degree Murder--Provocation
24-25.01 Definition of Insanity
4.18 Definition of Preponderance of the Evidence
24-25.01B Explanation of Guilty But Mentally Ill
24-25.01C Definition of Mentally Ill
7.04A/24-25.01F Issues Instruction--1st and 2nd Degree Murder--Insanity Defense--Guilty But Mentally Ill Verdict
26.01G Concluding Instruction--1st and 2nd Degree Murder--Insanity Defense--Guilty But Mentally Ill Verdict
26.02 Verdict Form--Not Guilty
26.03 Verdict Form--Not Guilty by Reason of Insanity of 1st Degree Murder
26.03 Verdict Form--Not Guilty by Reason of Insanity of 2nd Degree Murder
26.05 Verdict Form--Guilty of 1st Degree Murder
26.05 Verdict Form--Guilty of 2nd Degree Murder
26.04 Verdict Form--Guilty But Mentally Ill of 1st Degree Murder
26.04 Verdict Form--Guilty But Mentally Ill of 2nd Degree Murder

In Set 27.04B, the defendant, Thomas Swanson, is charged with the first degree murder of Henry Carter. The State's evidence shows that the two men had a verbal and physical confrontation before the defendant stabbed Henry Carter 17 times with an ice pick. The defendant puts forth an insanity defense, but does not testify. No defense witness testifies to the events surrounding Carter's death. The court instructs the jury on second degree murder. The court also instructs the jury on the guilty but mentally ill verdict.

27.04B First Degree Murder--Insanity Defense--Provocation--Second Degree Murder--Guilty But Mentally Ill Verdict--(Defendant Is Thomas Swanson)

[1.01]

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.

[2.01G]

The defendant is charged with the offense of first degree murder. The defendant has pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) guilty but mentally ill of first degree murder; or (5) not guilty by reason of insanity of second degree murder; or (6) guilty of second degree murder; or (7) guilty but mentally ill of second degree murder.

[2.02]

The charge against the defendant in this case is 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.

[2.03A]

The defendant is presumed to be innocent of the charge against him of first degree murder. 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 that the defendant is guilty of first degree murder, and this burden remains on the State throughout the case. The defendant is not required to prove his innocence.

If the State proves beyond a reasonable doubt that the defendant is guilty of first degree murder, the defendant then has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder, and not guilty of first degree murder. In deciding whether a mitigating factor is present, you should consider all of the evidence bearing on this question. The defendant is not required to present any evidence in order to establish the existence of a mitigating factor.

[2.03B]

The defense of insanity has been presented during the trial. The burden of proof is on the defendant to prove by clear and convincing evidence that the defendant is not guilty by reason of insanity. However, the burden remains on the State to prove beyond a reasonable doubt each of the elements of the offense charged. You may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity until and unless it has first been determined that the State has proved the defendant guilty beyond a reasonable doubt of the offense with which he is charged.

[2.04]

The fact that the defendant did not testify must not be considered by you in any way in arriving at your verdict.

[7.01]

A person commits the offense of first degree murder when he kills an individual without lawful justification if, in performing the acts which cause the death,

he intends to kill or do great bodily harm to that individual;

or

he knows that such acts will cause death to that individual;

or

he knows that such acts create a strong probability of death or great bodily harm to that individual.

[7.03]

A mitigating factor exists so as to reduce the offense of first degree murder to the lesser offense of second degree murder if, at the time of the killing, the defendant acts under a sudden and intense passion resulting from serious provocation by the deceased. Serious provocation is conduct sufficient to excite an intense passion in a reasonable person.

[24-25.01] A person is insane and not criminally responsible for his conduct if at the time of the conduct, as a result of mental disease or mental defect, he lacks substantial capacity to appreciate the criminality of his conduct.

[4.18] The phrase "preponderance of the evidence" means whether, considering all the evidence in the case, the proposition on which the defendant has the burden of proof is more probably true than not true.

[24-25.01B] A person may be found guilty but mentally ill and is not relieved of criminal responsibility for his conduct if at the time of the commission of the offense he was not insane but was suffering from a mental illness.

[24-25.01C] A person is mentally ill if, at the time of the commission of the offense, he was afflicted by a substantial disorder of thought, mood, or behavior which impaired his judgment, but not to the extent that he was unable to appreciate the wrongfulness of his behavior.

[7.04/24-25.01F] To sustain either the charge of first degree murder or the charge of second degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of Henry Carter; and

Second Proposition: That when the defendant did so,

he intended to kill or do great bodily harm to Henry Carter;

or he knew that such acts would cause death to Henry Carter;

or he knew that such acts created a strong probability of death or great bodily harm to Henry Carter.

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, your deliberations should end, and you should return a verdict of not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that the following mitigating factor is present: that the defendant, at the time he performed the acts which caused the death of Henry Carter, acted under a sudden and intense passion resulting from serious provocation by the deceased.

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that this mitigating factor is present, then you should go on with

your deliberations to decide whether the defendant has proved by a preponderance of the evidence that he is not guilty by reason of insanity on the charge of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that this mitigating factor is present, then you should go on with your deliberations to decide whether the defendant has proved by clear and convincing evidence that he is not guilty by reason of insanity on the charge of first degree murder.

You may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity on either the charge of first degree murder or the charge of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

If you find from your consideration of all the evidence that the defendant has proved by clear and convincing evidence that he is not guilty by reason of insanity, then you should find the defendant not guilty by reason of insanity of whichever murder charge, either first degree murder or second degree murder, that you found earlier to apply, your deliberations should end, and you should return a verdict of not guilty by reason of insanity on that murder charge.

If you find from your consideration of all the evidence that the defendant has not proved by clear and convincing evidence that he is not guilty by reason of insanity of first degree murder or second degree murder, then you should continue your deliberations to determine whether the defendant is guilty but mentally ill on that murder charge.

A special verdict of guilty but mentally ill may be returned by you instead of a general verdict of guilty if you find each of the following circumstances to be present in this case:

First: That the State has proved beyond a reasonable doubt each of the previously stated propositions necessary to sustain either the charge of first degree murder or the charge of second degree murder; and

Second: That the defendant has not proved by clear and convincing evidence that he was insane at the time he committed whichever murder you found earlier to be applicable; and

Third: That the defendant has proved by a preponderance of the evidence that he was mentally ill at the time he committed that murder.

If you find from your consideration of all the evidence that each one of these circumstances concerning the guilty but mentally ill verdict is present, you may return the special verdict finding the defendant guilty but mentally ill of the murder charge that you found earlier to be applicable.

If you find from your consideration of all the evidence that the State has proved beyond a reasonable doubt each of the previously stated propositions necessary to sustain either the charge of first degree murder or the charge of second degree murder and if you find that either the second or third circumstance concerning the guilty but mentally ill verdict is not present, you should return the general verdict finding the defendant guilty of the murder charge that you found earlier to be applicable.

[26.01G] 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 first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) guilty but mentally ill of first degree murder; or (5) not guilty by reason of insanity of second degree murder; or (6) guilty of second degree murder; or (7) guilty but mentally ill of second degree murder.

Accordingly, you will be provided with seven verdict forms: “not guilty”, “not guilty by reason of insanity of first degree murder”, “guilty of first degree murder”, “guilty but mentally ill of first degree murder”, “not guilty by reason of insanity of second degree murder”, “guilty of second degree murder”, and “guilty but mentally ill of second degree murder”.

From these seven 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 six verdict forms. Sign only one verdict form.

[26.02] We, the jury, find the defendant Thomas Swanson not guilty.

_____
Foreperson

_____
[Lines for eleven other jurors]

[26.03] We, the jury, find the defendant Thomas Swanson not guilty by reason of insanity of first degree murder.

_____
Foreperson

_____
[Lines for eleven other jurors]

[26.03] We, the jury, find the defendant Thomas Swanson not guilty by reason of insanity of second degree murder.

_____
Foreperson

_____
[Lines for eleven other jurors]

[26.05] We, the jury, find the defendant Thomas Swanson guilty of first degree murder.

_____
Foreperson

_____
[Lines for eleven other jurors]

[26.05] We, the jury, find the defendant Thomas Swanson guilty of second degree murder.

_____
Foreperson

_____
[Lines for eleven other jurors]

[26.04] We, the jury, find the defendant Thomas Swanson guilty but mentally ill of first degree murder.

_____
Foreperson

_____
[Lines for eleven other jurors]

[26.04] We, the jury, find the defendant Thomas Swanson guilty but mentally ill of second 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 27.04B)

Alternative, Single Page, Multiple Verdict Form We, the jury, find the defendant:

1. ____ Thomas Swanson not guilty. [26.02]
2. ____ Thomas Swanson not guilty by reason of insanity of first degree murder. [26.03]
3. ____ Thomas Swanson not guilty by reason of insanity of second degree murder. [26.03]
4. ____ Thomas Swanson guilty of first degree murder. [26.05]
5. ____ Thomas Swanson guilty of second degree murder. [26.05]
6. ____ Thomas Swanson guilty but mentally ill of first degree murder. [26.04]
7. ____ Thomas Swanson guilty but mentally ill of second degree murder. [26.04]

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

_____
Foreperson

_____
[Lines for eleven other jurors]

Set 27.05

Included within Set 27.05:

1.01	Functions of Court and Jury
1.02	Jury Sole Judges of Believability

1.03		Arguments of Counsel
2.01B	(modified)	Charge Against Defendant--1st Degree Murder (Type A) and (Type B)--2nd Degree Murder--Jury Instructed on Other Charge
7.01X		Explanation of (Type A) and (Type B) 1st Degree Murder
2.02		Indictment/Information Not Evidence
2.03	(modified)	Presumption of Innocence--Burden of Proof
2.03A	(modified)	Presumption of Innocence--Burden of Proof--1st and 2nd Degree Murder
3.02		Definition of Circumstantial Evidence
3.14		Evidence of Other Offenses
11.53		Definition of Home Invasion
11.54		Issues Instruction--Home Invasion
7.01A	(modified)	Definition of 1st Degree Murder (Type B)
7.02	(modified)	Issues Instruction--1st Degree Murder (Type B)
7.02X		Explanation of Relationship of Home Invasion to 1st Degree Murder (Type B)
7.01A	(modified)	Definition of 1st Degree Murder (Type A)
7.03A	(modified)	Definition of Mitigating Factor--2nd Degree Murder--Provocation
7.05A	(modified)	Definition of Mitigating Factor--2nd Degree Murder--Belief in Justification
7.06A	(modified)	Issues Instruction--1st Degree Murder (Type A) and 2nd Degree Murder--Provocation and Belief in Justification--Justifiable Use of Force
24-25.06		Use of Force in Defense of a Person
24-25.09		Initial Aggressor's Use of Force
24-25.10		Forcible Felon Not Entitled to Use Force
26.01B	(modified)	Concluding Instruction--1st Degree Murder (Type A) and (Type B)--2nd Degree Murder--Jury Instructed on Other Charge
26.02		Verdict Form--Not Guilty of 1st Degree Murder (Type B)
26.05		Verdict Form--Guilty of 1st Degree Murder (Type B)
26.02		Verdict Form--Not Guilty of 1st Degree Murder (Type A)
26.05		Verdict Form--Guilty of 1st Degree Murder (Type A)
26.05		Verdict Form--Guilty of 2nd Degree Murder
26.02		Verdict Form--Not Guilty of Home Invasion
26.05		Verdict Form--Guilty of Home Invasion

In the fifth case (Set 27.05), the defendant, Lester Williams, is charged with home invasion and first degree murder. The State claims that he killed the victim, Henry Baxter, while committing the forcible felony of home invasion. The defendant is also charged with first degree murder based upon the charge that he killed Baxter intending to kill or to do great bodily harm to Baxter, or knew that his acts would do so.

The evidence for the State shows that Williams, while armed with a hunting knife, entered the trailer of his estranged wife and therein confronted her and her new boyfriend, Baxter. The State's evidence is that an argument ensued, the defendant drew his knife and attacked Baxter, who subsequently died from the stab wounds.

The defendant testifies that his wife voluntarily permitted him to enter her trailer, Baxter started an argument with him, he left, and Baxter jumped him just outside the trailer's front door. Only then did the defendant pull his knife in self-defense and stab Baxter. Baxter then staggered

into the trailer where he collapsed and died on the living room floor.

The court permits the State to present evidence that three weeks before this confrontation, Williams struck Baxter in the head with a bottle while they were in a tavern and said, "If you don't stay away from my wife, I'm going to kill you."

The court instructs the jury on two different versions of first degree murder. One set of first degree murder instructions (Type A) is based upon the charge that defendant killed the deceased while intending to kill or cause great bodily harm to the deceased or knowing that his acts would do so. This set of instructions also permits the jury to find defendant guilty of second degree murder. The other set of first degree murder instructions (Type B) is based upon felony murder, and this set does not permit the jury to find the defendant guilty of second degree murder.

27.05 First Degree Murder With Some Counts Based On Felony Murder And Some Counts Based On "Knowing Or Intentional" Murder--Second Degree Murder--(Defendant Is Lester Williams)

[1.01]

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. When I use the word "he" in these instructions, I mean a male or female.

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.

[2.01B (modified)]

The defendant is charged with the offense of first degree murder (Type A). The defendant has pleaded not guilty. Under the law, a person charged with first degree murder (Type A) may be found (1) not guilty of first degree murder (Type A); or (2) guilty of first degree murder (Type A); or (3) guilty of second degree murder.

The defendant is also charged with the offenses of first degree murder (Type B) and home invasion. Defendant has pleaded not guilty to that charge.

[7.01X]

The terms "(Type A)" and "(Type B)" that I used in referring to first degree murder have no legal significance. I use those terms simply to distinguish between different kinds of first degree murder.

[2.02]

The charges against the defendants 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 (modified)]

The defendant is presumed to be innocent of the charges against him of first degree murder (Type B) and home invasion. This presumption remains with him throughout every stage of the trial and during your deliberations on the verdicts, 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.

[2.03A (modified)]

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

The State has the burden of proving that the defendant is guilty of first degree murder (Type A), and this burden remains on the State throughout the case. The defendant is not required to prove his innocence.

If the State proves beyond a reasonable doubt that the defendant is guilty of first degree murder (Type A), the defendant then has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder, and not guilty of first degree murder (Type A). In deciding whether a mitigating factor is present, you should consider all of the evidence bearing on this question.

[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.

[3.14]

Evidence has been received that the defendant has been involved in an offense other than those charged in the indictment.

This evidence has been received on the issue of the defendant's intent and may be considered by you only for that limited purpose.

It is for you to determine whether the defendant was involved in that offense and, if so, what weight should be given to this evidence on the issue of the defendant's intent.

[11.53]

A person commits the offense of home invasion when he, not being a police officer acting in the line of duty, without authority, knowingly enters the dwelling place of another when he knows or has reason to know that one or more persons is present, and intentionally causes any injury to any person within the dwelling place.

[11.54]

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

First Proposition: That the defendant was not a police officer acting in the line of duty; and

Second Proposition: That he knowingly and without authority entered the dwelling place of another; and

Third Proposition: That when he entered the dwelling place he knew or had reason to know that one or more persons was present; and

Fourth Proposition: That he intentionally caused an injury to Henry Baxter, a person within the dwelling place.

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.

[7.01 (modified)]

A person commits the offense of first degree murder (Type B) when he kills an individual if, in performing the acts which caused the death, he is committing the offense of home invasion.

[7.02 (modified)]

To sustain the charge of first degree murder (Type B), the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of Henry Baxter; and

Second Proposition: That when the defendant did so, he was committing the offense of home invasion.

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.

[7.02X]

To sustain the charge of first degree murder (Type B), the State must prove that when the defendant performed the acts which caused the death of Henry Baxter, the defendant was committing the offense of home invasion. Accordingly, you may find the defendant guilty of first degree murder (Type B) only if you also find the defendant guilty of home invasion.

If you find the defendant not guilty of home invasion, then you must find the defendant not guilty of first degree murder (Type B).

[7.01 (modified)]

A person commits the offense of first degree murder (Type A) when he kills an individual without lawful justification if, in performing the acts which caused the death,
he intends to kill or do great bodily harm to that individual;

or

he knows that such acts will cause death to that individual;

or

he knows that such acts create a strong probability of death or great bodily harm to that individual.

[7.03 (modified)]

A mitigating factor exists so as to reduce the offense of first degree murder (Type A) to the lesser offense of second degree murder if, at the time of the killing, the defendant acts under a sudden and intense passion resulting from serious provocation by the deceased. Serious provocation is conduct sufficient to excite an intense passion in a reasonable person.

[7.05 (modified)]

A mitigating factor exists so as to reduce the offense of first degree murder (Type A) to the lesser offense of second degree murder if at the time of the killing the defendant believes that circumstances exist which would justify the deadly force he uses, but his belief that such circumstances exist is unreasonable.

[7.06 (modified)]

To sustain either the charge of first degree murder (Type A) or the charge of second degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of Henry Baxter; and

Second Proposition: That when the defendant did so, he intended to kill or do great bodily harm to Henry Baxter;

or

he knew that such acts would cause death to Henry Baxter;

or

he knew that such acts created a strong probability of death or great bodily harm to Henry Baxter;

and

Third Proposition: That the defendant was not justified in using the force which he used.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, your deliberations on these charges should end, and you should return a verdict of not guilty of first degree murder (Type A).

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder (Type A).

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder (Type A). By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that either of the following mitigating factors is present:

that the defendant, at the time he performed the acts which caused the death of Henry Baxter, acted under a sudden and intense passion resulting from serious provocation by the deceased,

or

that the defendant, at the time he performed the acts which caused the death of Henry Baxter, believed the circumstances to be such that they justified the deadly force he used, but his belief that such circumstances existed was unreasonable.

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder (Type A), you should find the defendant guilty of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder (Type A), you should find the defendant guilty of first degree murder (Type A).

[24-25.06]

A person is justified in the use of force when and to the extent that he reasonably believes that such conduct is necessary to defend himself against the imminent use of unlawful force. However, a person is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself.

[24-25.09]

A person who initially provokes the use of force against himself is justified in the use of force only if the force used against him is so great that he reasonably believes he is in imminent danger of death or great bodily harm, and he has exhausted every reasonable means to escape the danger other than the use of force which is likely to cause death or great bodily harm to the other person.

[24-25.10]

A person is not justified in the use of force if he is attempting to commit or committing home invasion.

[26.01B (modified)]

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 first degree murder (Type A). Under the law, a person charged with first degree murder (Type A) may be found (1) not guilty of first degree murder (Type A); or (2) guilty of first degree murder (Type A); or (3) guilty of second degree murder.

Accordingly, you will be provided with three verdict forms: “not guilty of first degree murder (Type A)”, “guilty of first degree murder (Type A)”, and “guilty of second degree murder”.

>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 first degree murder (Type B). You will receive two forms of verdict as to this charge. You will be provided with both a "not guilty of first degree murder (Type B)", and a "guilty of first degree murder (Type B)" form of verdict.

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

The defendant is also charged with the offense of home invasion. You will receive two forms of verdict as to this charge. You will be provided with both a "not guilty of home invasion", and a "guilty of home invasion" form of verdict.

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

[26.02]

We, the jury, find the defendant Lester Williams not guilty of first degree murder (Type B).

_____
Foreperson

_____
[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Lester Williams guilty of first degree murder (Type B).

_____
Foreperson

_____
[Lines for eleven other jurors]

[26.02]

We, the jury, find the defendant Lester Williams not guilty of first degree murder (Type A).

_____
Foreperson

_____
[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Lester Williams guilty of first degree murder (Type A).

_____
Foreperson

_____
[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Lester Williams guilty of second degree murder.

_____
Foreperson

_____
[Lines for eleven other jurors]

[26.02]

We, the jury, find the defendant Lester Williams not guilty of home invasion.

_____
Foreperson

_____
[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Lester Williams guilty of home invasion.

_____
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 27.05)

Alternative, Single Page, Multiple Verdict Form

We, the jury, find the defendant:

1. ____ Lester Williams not guilty of first degree murder (Type B). [26.02]
2. ____ Lester Williams guilty of first degree murder (Type B). [26.05]

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

_____
Foreperson

_____
[Lines for eleven other jurors]

(Set 27.05)

Alternative, Single Page, Multiple Verdict Form

We, the jury, find the defendant:

1. ____ Lester Williams not guilty of first degree murder (Type A). [26.02]
2. ____ Lester Williams guilty of first degree murder (Type A). [26.05]
3. ____ Lester Williams guilty of second degree murder. [26.05]

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

_____
Foreperson

_____

[Lines for eleven other jurors]

(Set 27.05)

Alternative, Single Page, Multiple Verdict Form

We, the jury, find the defendant:

1. ____ Lester Williams not guilty of home invasion. [26.02]
2. ____ Lester Williams guilty of home invasion. [26.05]

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

_____
Foreperson

_____
[Lines for eleven other jurors]

SET 27.06

Instructions Included within Set 27.06:

1.01 Functions of Court and Jury

1.02 Jury Sole Judges of Believability
1.03 Arguments of Counsel
2.01I Charge Against Defendant--1st and 2nd Degree Murder--Involuntary Manslaughter
2.02 Indictment/Information Not Evidence
2.03 (modified) Presumption of Innocence--Burden of Proof
2.03A Presumption of Innocence--Burden of Proof--1st and 2nd Degree Murder
3.02 Definition of Circumstantial Evidence
7.01A Definition of 1st Degree Murder
7.05A Definition of Mitigating Factor--2nd Degree Murder--Belief in Justification
7.06A Issues Instruction--1st and 2nd Degree Murder--Belief in Justification--Justifiable Use of Force
7.07 Definition of Involuntary Manslaughter
5.01 Definition of Recklessness
7.08/24-25.06 A Issues Instruction--Involuntary Manslaughter--Justifiable Use of Force
7.15 Causation in Homicide Cases
26.01I Concluding Instruction--1st and 2nd Degree Murder--Involuntary Manslaughter
26.02 Verdict Form--Not Guilty
26.05 Verdict Form--Guilty of 1st Degree Murder
26.05 Verdict Form--Guilty of 2nd Degree Murder
26.05 Verdict Form--Guilty of Involuntary Manslaughter

In the sixth case (Set 27.06), the defendant, Edward Grady, is charged with the first degree murder of James Ross. The State's evidence shows that Grady and Ross lived in the same neighborhood and had a long-standing feud. On the evening in question, the feud became more heated, and Grady shot Ross, stating, “I'm not going to put up with your taunts any longer.”

Grady testifies that he feared for his life because of Ross' previous threats and violent behavior toward him. Grady claims that on the evening in question, he was carrying a gun only because the day before Ross had threatened to beat Grady into the ground the next time Ross saw Grady. Grady testifies that he carried his father's gun on the night in question just for the purpose of scaring Ross away. Grady also testifies that he had been told and believed that the gun was always unloaded. Last, Grady testifies that he never intended to shoot Ross and that he was shocked when the gun went off.

Ross is hospitalized for six weeks after the shooting and undergoes surgery twice. Ross dies after the second surgery. Grady presents evidence that Ross' doctors mishandled the case, that Ross' second surgery was due to malpractice during his first surgery, and that Ross might have recovered from his gunshot wounds but for this malpractice. The court instructs the jury on first degree murder, second degree murder, and involuntary manslaughter.

27.06 First Degree Murder--Second Degree Murder--Involuntary Manslaughter--(Defendant Is Edward Grady)

[1.01]

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.

[2.01I]

The defendant is charged with the offense of first degree murder. The defendant has pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) guilty of first degree murder; or (3) guilty of second degree murder; or (4) guilty of involuntary manslaughter.

[2.02]

The charge against the defendant[s] in this case is 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 (modified)]

The defendant is presumed to be innocent of the charge against him of involuntary manslaughter. 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.

[2.03A]

The defendant is presumed to be innocent of the charge against him of first degree murder. 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 that the defendant is guilty of first degree murder, and this burden remains on the State throughout the case. The defendant is not required to prove his innocence.

If the State proves beyond a reasonable doubt that the defendant is guilty of first degree murder, the defendant then has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder, and not guilty of first degree murder. In deciding whether a mitigating factor is present, you should consider all of the evidence bearing on this question.

[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.

[7.01]

A person commits the offense of first degree murder when he kills an individual without lawful justification if, in performing the acts which caused the death,

he intends to kill or do great bodily harm to that individual;

or

he knows that such acts will cause death to that individual;

or

he knows that such acts create a strong probability of death or great bodily harm to that individual.

[7.05]

A mitigating factor exists so as to reduce the offense of first degree murder to the lesser offense of second degree murder if at the time of the killing the defendant believes that circumstances exist which would justify the deadly force he uses, but his belief that such circumstances exist is unreasonable.

[7.06]

To sustain either the charge of first degree murder or the charge of second degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of James Ross; and

Second Proposition: That when the defendant did so,

he intended to kill or do great bodily harm to James Ross;

or

he knew that such acts would cause death to James Ross;

or

he knew that such acts created a strong probability of death or great bodily harm to James Ross;

and

Third Proposition: That the defendant was not justified in using the force which he used.

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

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that the following mitigating factor is present: that the defendant, at the time he performed the acts which caused the death of James Ross, believed the circumstances to be such that they justified the deadly force he used,

but his belief that such circumstances existed was unreasonable.

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of first degree murder.

[7.07]

A person commits the offense of involuntary manslaughter when he unintentionally causes the death of an individual without lawful justification by acts which are performed recklessly and are likely to cause death or great bodily harm to another.

[5.01]

A person acts recklessly when he consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.

[7.08/24-25.06A]

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

First Proposition: That the defendant performed the acts which caused the death of James Ross; and

Second Proposition: That the defendant performed those acts recklessly; and

Third Proposition: That those acts were likely to cause death or great bodily harm; and

Fourth Proposition: That the defendant was not justified in using the force which he used.

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.

[7.15]

In order for you to find that the acts of the defendant caused the death of James Ross, the State must prove beyond a reasonable doubt that defendant's acts were a contributing cause of the death and that the death did not result from a cause unconnected with the defendant. However, it is not necessary that you find the acts of the defendant were the sole and immediate cause of death.

[26.01I]

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 first degree murder. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) guilty of first degree murder; or (3) guilty of second degree murder; or (4) guilty of involuntary manslaughter.

Accordingly, you will be provided with four verdict forms: "not guilty", "guilty of first degree murder", "guilty of second degree murder", and "guilty of involuntary manslaughter".

During your deliberations, you should first consider whether each of the propositions for first degree murder has been proved beyond a reasonable doubt. If you find that each of those propositions has been proved, your deliberations should continue as to the additional proposition regarding whether the defendant is guilty of second degree murder instead of first degree murder.

If you find that any of the propositions regarding first degree murder have not been proved beyond a reasonable doubt, your deliberations on first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

Under the law, if you find the defendant guilty of either first degree murder, second degree murder, or involuntary manslaughter, you can sign a guilty verdict on only one of these three offenses. Accordingly, if you find the defendant guilty of either first degree murder or second degree murder, that verdict would mean that the defendant is not guilty of involuntary manslaughter. Likewise, if you find the defendant guilty of involuntary manslaughter, that verdict would mean that the defendant is not guilty of first degree murder and second degree murder.

At the conclusion of your deliberations, you should select the one verdict form that reflects your verdict [as to each defendant] and sign it as I have stated. Do not write on the other verdict forms [as to that defendant]. Sign only one verdict form [as to each defendant].

[26.02]

We, the jury, find the defendant Edward Grady not guilty.

_____
Foreperson

_____
[Lines for eleven other jurors]

We, the jury, find the defendant Edward Grady guilty of first degree murder.

_____
Foreperson

_____
[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Edward Grady guilty of second degree murder.

_____
Foreperson

_____
[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Edward Grady guilty of involuntary manslaughter.

_____

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 27.06)

Alternative, Single Page, Multiple Verdict Form We, the jury, find the defendant:

1. ____ Edward Grady not guilty. [26.02]
2. ____ Edward Grady guilty of first degree murder. [26.05]
3. ____ Edward Grady guilty of second degree murder. [26.05]
4. ____ Edward Grady guilty of involuntary manslaughter. [26.05]

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

_____

Foreperson

_____

[Lines for eleven other jurors]

SET 27.07

Instructions Included within Set 27.07:

1.02	Jury Sole Judges of Believability
1.03	Arguments of Counsel

1.05 Jury Notetaking
2.01Q (modified) Charge Against Defendant--Possession With Intent to Deliver 400 Grams or More of a Substance Containing Cocaine--Jury Instructed on Lesser Included Offenses--Jury Not Instructed on Any Other Charge
2.03 Presumption of Innocence--Burden of Proof
3.02 Definition of Circumstantial Evidence
4.16 Possession
5.01A Intent
5.01B Knowledge
17.17 Definition of Delivery of a Controlled Substance Weighing 400 Grams or More
17.05A Definition of Deliver
17.18 Issues Instruction--Delivery of a Controlled Substance Weighing 400 Grams or More
17.17 Definition of Delivery of a Controlled Substance Weighing One Gram or More But Less Than 15 Grams
17.18 Issues Instruction--Delivery of a Controlled Substance Weighing One Gram or More But Less Than 15 Grams
17.19 Definition of Possession of a Controlled Substance Weighing 400 Grams or More
17.20 Issues Instruction--Possession of a Controlled Substance Weighing 400 Grams or More
17.19 Definition of Possession of a Controlled Substance Weighing One Gram or More But Less Than 15 Grams
17.20 Issues Instruction--Possession of a Controlled Substance Weighing One Gram or More But Less Than 15 Grams
26.01Q (modified) Concluding Instruction--Possession With Intent to Deliver 400 Grams or More of a Substance Containing Cocaine--Jury Instructed on Lesser Included Offenses--Jury Not Instructed on Any Other Charge
26.02 Verdict Form--Not Guilty
26.05 Verdict Form--Guilty of Possession With Intent to Deliver 400 Grams or More of a Substance Containing Cocaine
26.05 Verdict Form--Guilty of Possession With Intent to Deliver One Gram or More But Less Than 15 Grams of a Substance Containing Cocaine
26.05 Verdict Form--Guilty of Possession of 400 Grams or More of a Substance Containing Cocaine
26.05 Verdict Form--Guilty of Possession of One Gram or More But Less Than 15 Grams of a Substance Containing Cocaine

In the seventh case (Set 27.07), the defendant, Karen Scott, is charged by indictment with the offense of possession with the intent to deliver 400 grams or more of a substance containing cocaine. Evidence presented at trial revealed that the cocaine was found in two different rooms of a drug house allegedly run by Scott: 398 grams were found inside the freezer which was located in the kitchen, and 4 grams were found in a nightstand drawer in a bedroom. Near the freezer, the police also found some baggies and a jar of inositol. A small facial mirror, a razor, a straw, and some letters addressed to Scott were found in the nightstand drawer.

Scott argues that none of the cocaine is hers. In the alternative, she argues that only the cocaine found in the nightstand drawer is hers. The State argues that all of the cocaine found in

the house is Scott's and that the large quantity of cocaine, the baggies, and the inositol found in the kitchen are evidence of Scott's intent to deliver.

At Scott's request, the court instructs the jury on the lesser included offenses of possession with the intent to deliver more than one gram but less than 15 grams of a substance containing cocaine, possession of 400 grams or more of a substance containing cocaine, and possession of more than one gram but less than 15 grams of a substance containing cocaine. The court also decides to instruct the jury on notetaking.

27.07 Possession With The Intent To Deliver A Controlled Substance Given With Lesser Included Offenses--(Defendant Is Karen Scott)

[1.01]

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. When I use the word "he" in these instructions, I mean a male or a female.

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.

You are not to concern yourself with possible punishment or sentence for the offense charged during your deliberations. It is the function of the trial judge to determine the sentence should there be a verdict of guilty.

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 age, 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.

[1.05]

Those of you who took notes during trial may use your notes to refresh your memory during jury deliberations.

Each juror should rely on his or her recollection of the evidence. Just because a juror has taken notes does not necessarily mean that his or her recollection of the evidence is any better or more accurate than the recollection of a juror who did not take notes.

When you are discharged from further service in this case, your notes will be collected by the deputy and destroyed. Throughout that process, your notes will remain confidential and no one will be allowed to see them.

[2.01Q (modified)]

The defendant is charged with the offense of possession with the intent to deliver 400 grams or more of a substance containing cocaine. The defendant has pleaded not guilty. Under the law, a person charged with possession with the intent to deliver 400 grams or more of a substance containing cocaine may be found (1) not guilty; or (2) guilty of possession with the intent to deliver 400 grams or more of a substance containing cocaine; or (3) guilty of possession with the intent to deliver one gram or more but less than 15 grams of a substance containing cocaine; or (4) guilty of possession of 400 grams or more of a substance containing cocaine; or (5) guilty of possession of more than one gram but less than 15 grams of a substance containing cocaine.

[2.02]

The charge against the defendant in this case is 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 charge against her. This presumption remains with her 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 her 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.

[4.16]

Possession may be actual or constructive. A person has actual possession when she has immediate and exclusive control over a thing. A person has constructive possession when she lacks actual possession of a thing but she has both the power and the intention to exercise control over a thing either directly or through another person.

If two or more persons share the immediate and exclusive control or share the intention and the power to exercise control over a thing, then each person has possession.

[5.01A]

A person intends to accomplish a result or engage in conduct when her conscious objective or purpose is to accomplish that result or engage in that conduct.

[5.01B]

A person knows the nature or attendant circumstances of her conduct when she is consciously aware that her conduct is of such a nature or that such circumstances exist. Knowledge of a material fact includes awareness of the substantial probability that such fact exists.

A person knows the result of her conduct when she is consciously aware that such result is practically certain to be caused by her conduct.

[17.17]

A person commits the offense of possession with intent to deliver a controlled substance when she knowingly possesses with intent to deliver a substance containing a controlled substance and the substance containing the controlled substance weighs 400 grams or more.

[17.05A]

The word "deliver" means to transfer possession or to attempt to transfer possession.

The word "deliver" includes a constructive transfer of possession which occurs without an actual physical transfer. When the conduct or declarations of the person who has the right to exercise control over a thing is such as to effectively relinquish the right of control to another person, so that the other person is then in constructive possession, there has been a delivery.

A delivery may occur with or without the transfer or exchange of money, or with or without the transfer or exchange of other consideration.

[17.18]

To sustain the charge of possession with intent to deliver a controlled substance when the substance containing the controlled substance weighed 400 grams or more, the State must prove the following propositions:

First Proposition: That the defendant knowingly possessed with intent to deliver a substance containing cocaine, a controlled substance; and

Second Proposition: That the weight of the substance containing the controlled substance was 400 grams or more.

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.

[17.17]

A person commits the offense of possession with intent to deliver a controlled substance when she knowingly possesses with intent to deliver a substance containing a controlled substance and the substance containing the controlled substance weighs one gram or more but less than 15 grams.

[17.18]

To sustain the charge of possession with intent to deliver a controlled substance when the substance containing the controlled substance weighed one gram or more but less than 15 grams, the State must prove the following propositions:

First Proposition: That the defendant knowingly possessed with intent to deliver a substance containing cocaine, a controlled substance; and

Second Proposition: That the weight of the substance containing the controlled substance was one gram or more but less than 15 grams.

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.

[17.27]

A person commits the offense of possession of a controlled substance when she knowingly possesses a substance containing a controlled substance and the substance containing the controlled substance weighs 400 grams or more.

[17.28]

To sustain the charge of possession of a controlled substance when the substance containing the controlled substance weighed 400 grams or more, the State must prove the following propositions:

First Proposition: That the defendant knowingly possessed a substance containing cocaine, a controlled substance; and

Second Proposition: That the weight of the substance possessed was 400 grams or more.

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.

[17.27]

A person commits the offense of possession of a controlled substance when she knowingly possesses a substance containing a controlled substance and the substance containing the controlled substance weighs one gram or more but less than 15 grams.

[17.28]

To sustain the charge of possession of a controlled substance when the substance containing the controlled substance weighed one gram or more but less than 15 grams, the State must prove the following propositions:

First Proposition: That the defendant knowingly possessed a substance containing cocaine, a controlled substance; and

Second Proposition: That the weight of the substance possessed was one gram or more but less than 15 grams.

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.

[26.01Q (modified)]

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 possession with intent to deliver 400 grams or more of a substance containing cocaine. Under the law, a person charged with possession with intent to deliver 400 grams or more of a substance containing cocaine may be found (1) not guilty; or (2) guilty of possession with intent to deliver 400 grams or more of a substance containing cocaine; or (3) guilty of possession with intent to deliver one gram or more but less than 15 grams of a substance containing cocaine; or (4) guilty of possession of 400 grams or more of a substance containing cocaine; or (5) guilty of possession of more than one gram but less than 15 grams of a substance containing cocaine.

Accordingly, you will be provided with five verdict forms: “not guilty”, “guilty of possession with intent to deliver 400 grams or more of a substance containing cocaine”, “guilty of possession with intent to deliver one gram or more but less than 15 grams of a substance containing cocaine”, “guilty of possession of 400 grams or more of a substance containing cocaine”, and “guilty of possession of one gram or more but less than 15 grams of a substance containing cocaine”.

From these five 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 four verdict forms. Sign only one of these verdict forms.

If you find the State has proved the defendant guilty of both possession with intent to deliver 400 grams or more of a substance containing cocaine and possession with intent to deliver one gram or more but less than 15 grams of a substance containing cocaine, you should select the verdict form finding the defendant guilty of possession with intent to deliver 400 grams or more of a substance containing cocaine and sign it as I have stated. Under these circumstances, do not sign the verdict form finding the defendant guilty of possession with intent

to deliver one gram or more but less than 15 grams of a substance containing cocaine.

If you find that the State has not proved the defendant guilty of possession with intent to deliver 400 grams or more of a substance containing cocaine, but you find that the State has proved defendant guilty of possession with intent to deliver one gram or more but less than 15 grams of a substance containing cocaine, you should select the verdict form finding the defendant guilty of possession with intent to deliver one gram or more but less than 15 grams of a substance containing cocaine and sign it as I have stated. Under these circumstances, do not sign either of the verdict forms finding the defendant guilty of possession of 400 grams or more of a substance containing cocaine or guilty of possession of one gram or more but less than 15 grams of a substance containing cocaine.

If you find that the State has not proved the defendant guilty of either charge of possession with intent to deliver a substance containing cocaine, but you find the State has proved defendant guilty of both possession of 400 grams or more of a substance containing cocaine and possession of one gram or more but less than 15 grams of a substance containing cocaine, you should select the verdict form finding the defendant guilty of possession of 400 grams or more of a substance containing cocaine and sign it as I have stated. Under these circumstances, do not sign the verdict form finding the defendant guilty of possession of one gram or more but less than 15 grams of a substance containing cocaine.

[26.02]

We, the jury, find the defendant Karen Scott not guilty.

_____
Foreperson

_____
[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Karen Scott guilty of possession with intent to deliver 400 grams or more of a substance containing cocaine.

_____
Foreperson

_____
[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Karen Scott guilty of possession with intent to deliver one gram or more but less than 15 grams of a substance containing cocaine.

_____
Foreperson

_____
[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Karen Scott guilty of possession of 400 grams or more of a substance containing cocaine.

_____
Foreperson

_____
[Lines for eleven other jurors]

[26.05]

We, the jury, find the defendant Karen Scott guilty of possession of one gram or more but less than 15 grams of a substance containing cocaine.

_____
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 27.07)

Alternative, Single Page, Multiple Verdict Form

We, the jury, find the defendant:

1. ____ Karen Scott not guilty. [26.02]
2. ____ Karen Scott guilty of possession with intent to deliver 400 grams or more of a substance containing cocaine. [26.05]
3. ____ Karen Scott guilty of possession with intent to deliver one gram or more but less than 15 grams of a substance containing cocaine. [26.05]
4. ____ Karen Scott guilty of possession of 400 grams or more of a substance containing cocaine. [26.05]
5. ____ Karen Scott guilty of possession of one gram or more but less than 15 grams of a substance containing cocaine. [26.05]

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

_____
Foreperson

_____
[Lines for eleven other jurors]