

State of Minnesota,

Crim. Case No. 62-CR-10-1465 & 64

Plaintiff,

v.

**DEFENDANTS' PROPOSED JURY
INSTRUCTIONS**

Suttles/Drljic,

Defendant.

DEFENDANTS' PROPOSED JURY INSTRUCTIONS

Defendant proposes the following jury instructions. He reserves the right to request oral amendments to these instructions.

Instructions before trial:

In addition to those instructions usually read by the Court prior to trial, Defendant requests:

TRANSCRIPT OF TAPE-RECORDED CONVERSATION¹

As you have [also] heard, there is a typewritten transcript of the tape recording [I just mentioned] [you are about to hear]. That transcript also undertakes to identify the speakers engaged in the conversation.

You are permitted to have the transcript for the limited purpose of helping you follow the conversation as you listen to the tape recording, and

¹ 8th Circuit Model instruction 2.05.

also to help you identify the speakers. The tape recording is evidence for you to consider. The transcript, however, is not evidence.

You are specifically instructed that whether the transcript correctly or incorrectly reflects the conversation or the identity of the speakers is entirely for you to decide based upon what you have heard here about the preparation of the transcript, and upon your own examination of the transcript in relation to what you hear on the tape recording. The tape recording itself is the primary evidence of its own contents. If you decide that the transcript is in any respect incorrect or unreliable, you should disregard it to that extent.

Differences between what you hear in the recording and read in the transcript may be caused by such things as the inflection in a speaker's voice, or by inaccuracies in the transcript. You should, therefore, rely on what you hear rather than what you read when there is a difference.²

Instructions at the close of trial

CRIMJIG 3.01

Duties of Judge and Jury

It is your duty to decide the questions of fact in this case. It is my duty to give you the rules of law you must apply in arriving at your verdict.

You must follow and apply the rules of law as I give them to you, even if you believe the law is or should be different. Deciding questions of fact is your

² Id.

exclusive responsibility. In doing so, you must consider all the evidence you have heard and seen in this trial, and you must disregard anything you may have heard or seen elsewhere about this case.

I have not by these instructions, nor by any ruling or expression during the trial, intended to indicate my opinion regarding the facts or the outcome of this case. If I have said or done anything that would seem to indicate such an opinion, you are to disregard it.

CRIMJIG 3.02

Presumption of Innocence

The defendant is presumed innocent of the charge made. This presumption remains with the defendant unless and until the defendant has been proven guilty beyond a reasonable doubt. That the defendant has been brought before the court by the ordinary processes of the law and is on trial should not be considered by you as in any way suggesting guilt. The burden of proving guilt is on the State. The defendant does not have to prove innocence.

CRIMJIG 3.03

Beyond a Reasonable Doubt

Proof beyond a reasonable doubt is proof of such a convincing character that ordinarily prudent men and women would not pause or hesitate to rely and act upon it in their most important affairs. A reasonable doubt is a doubt based upon reason and common sense. It does not mean a

fanciful or capricious doubt. Absolute certainty is not demanded by the law, but moral certainty is required. There is always a reasonable doubt when the evidence simply makes it probable that the defendant is guilty. Mere probability of guilt will never warrant you to convict the defendant. Proof must leave you with a firm and abiding conviction that the defendant is guilty. If there is a reasonable hypothesis or explanation consistent with innocence, you must acquit.

CRIMJIG 3.04

Unanimous Verdict—Duty of Jurors to Discuss

In order for you to return a verdict, whether guilty or not guilty, each juror must agree with that verdict. Your verdict must be unanimous.

You should discuss the case with one another, and deliberate with a view toward reaching agreement, if you can do so without violating your individual judgment. You should decide the case for yourself, but only after you have discussed the case with your fellow jurors and have carefully considered their views. You should not hesitate to reexamine your views and change your opinion if you become convinced they are erroneous, but you should not surrender your honest opinion simply because other jurors disagree or merely to reach a verdict.

CRIMJIG 3.05

Direct and Circumstantial Evidence

A fact may be proven by either direct or circumstantial evidence, or by both. The law does not prefer one form of evidence over the other.

A fact is proven by direct evidence when, for example, it is proven by witnesses who testify to what they saw, heard, or experienced, or by physical evidence of the fact itself. A fact is proven by circumstantial evidence when its existence can be reasonably inferred from other facts proven in the case.

CRIMJIG 3.06

Rulings on Objections to Evidence

During this trial I have ruled on objections to certain testimony (and exhibits). You must not concern yourself with the reasons for the rulings, since they are controlled by rules of law.

By receiving evidence to which objection was made, I did not intend to indicate the weight to be given such evidence. You are not to speculate as to possible answers to questions I did not require to be answered. You are to disregard all evidence I have ordered stricken or have told you to disregard.

CRIMJIG 3.07

Instructions to Be Considered as a Whole

You must consider these instructions as a whole and regard each instruction in the light of all the others. The order in which the instructions

are given is of no significance. You are free to consider the issues in any order you wish.

CRIMJIG 3.08

Jury May Return for Information

This Court permits the jury to ask questions of the lawyers and the Court during your deliberations. Questions should be asked by _____.

CRIMJIG 3.09

Notes Taken by Jurors

You have been allowed to take notes during the trial. You may take those notes with you to the jury room. You should not consider these notes binding or conclusive, whether they are your notes or those of another juror. The notes should be used as an aid to your memory and not as a substitute for it. It is your recollection of the evidence that should control. You should disregard anything contrary to your recollection that may appear from your own notes or those of another juror. You should not give greater weight to a particular piece of evidence solely because it is referred to in a note taken by a juror.

CRIMJIG 3.10

Masculine or Feminine Form of Pronoun—Singular or Plural Nouns and Pronouns

[The Committee recommends no instruction.]

CRIMJIG 3.11

Statements of Judge and Attorneys

Attorneys are officers of the court. It is their duty to make objections they think proper and to argue their client's cause. The arguments or other remarks of an attorney are not evidence. But if the attorney's question is necessary for an understanding of the witness' answer, then you may consider it.

If the attorneys or I have made or should make any statement as to what the evidence is, which differs from your recollection of the evidence, you should disregard the statement and rely solely on your own memory. If an attorney's argument contains any statement of the law that differs from the law I give you, disregard the statement.

CRIMJIG 3.12

Evaluation of Testimony—Believability of Witnesses

You are the sole judges of whether a witness is to be believed and of the weight to be given a witness's testimony. There are no hard and fast rules to guide you in this respect. In determining believability and weight of testimony, you may take into consideration the witness's:

[1] Interest or lack of interest in the outcome of the case,

[2] Relationship to the parties,

[3] Ability and opportunity to know, remember, and relate the facts,

[4] Manner,

[5] Age and experience,

[6] Frankness and sincerity, or lack thereof,

[7] Reasonableness or unreasonableness of their testimony in the light of all the other evidence in the case,

[8] [Any impeachment of the witness's testimony],

[9] And any other factors that bear on believability and weight.

You should rely in the last analysis upon your own experience, good judgment, and common sense.

CRIMJIG 3.13

Expert Testimony

A witness who has special training, education, or experience in a particular science, occupation, or calling, is allowed to express an opinion as to certain facts, if the court rules that they are an expert witness.³ In determining the believability and weight to be given such opinion evidence, you may consider:

[1] The education, training, experience, knowledge, and ability of the witness,

[2] The reasons given for the opinion,

³ This is inserted so that jurors don't simply believe that all police are experts, merely because they are trained.

[3] The sources of the information,

[4] Factors already given you for evaluating the testimony of any witness.

Such opinion evidence is entitled to neither more nor less consideration by you than any other evidence.

CRIMJIG 3.15

Impeachment

In deciding the believability and weight to be given the testimony of a witness, you may consider:

[1] Evidence that the witness has been convicted of a crime. You may consider whether the kind of crime committed indicates the likelihood the witness is telling or not telling the truth. (In the case of the defendant, you must be especially careful to consider any previous conviction only as it may affect the weight of the defendant's testimony. You must not consider any previous conviction as evidence of guilt of the offense for which the defendant is on trial. **-only to be given if there is conviction evidence against a defendant in this trial.**)

[2] Evidence of the witness's reputation for truthfulness.

[3] Evidence of (a statement by) (or) (conduct of) the witness on some prior occasion that is inconsistent with present testimony. Evidence of any prior

inconsistent (statement) (conduct) should be considered only to test the believability and weight of the witness's testimony. [In the case of the defendant, however, evidence of any statement (he) (she) may have made may be considered by you for all purposes.]

CRIMJIG 3.23 (Amended by Defense counsel)

MULTIPLE OFFENSES CONSIDERED SEPARATELY

In this case, multiple defendants have been charged, and each defendant has been charged with multiple offenses. You should consider each offense, and the evidence pertaining to it, separately. The fact that you may find defendant guilty or not guilty as to one of the charged offenses should not control your verdict as to any other offense.

CRIMJIG 17.12

Burglary in the Fourth Degree—Defined

The statutes of Minnesota provide that whoever

[1] Enters a building without the consent of the person in lawful possession,

[2] Enters a building by using artifice, trick, or misrepresentation to obtain consent to enter from the person in lawful possession,

[3] Remains within a building without the consent of the person in lawful possession,

(with intent to commit a crime) (and commits a crime while in the building),
is guilty of a crime.

CRIMJIG 17.13

Burglary in the Fourth Degree—Elements

The elements of burglary in the fourth degree are:

First, the structure involved in this case was a building. A "building" is a structure suitable for affording shelter for human beings, including any [adjacent] [appurtenant] or connected structure.

Second, the defendant [entered a building without the consent of the person in lawful possession] [entered by using artifice, trick, or misrepresentation to obtain consent to enter from the person in lawful possession] [remained within a building without consent of the person in lawful possession]. [The entry does not have to have been made by force or by breaking in. Entry through an open or unlocked door or window is sufficient.] [Whoever enters a building while open to the general public does so with consent, except when consent was expressly withdrawn before entry.] [The defendant need not have entered the building without the consent of the person in lawful possession, nor does it matter whether that person knows of the defendant's remaining, so long as that person does not consent to the defendant's remaining in the building.]

[1] Third, the defendant [entered] [or] [remained in] the building with the intent to commit _____. It is not necessary that the intended crime have actually been completed or attempted, but it is necessary that the defendant intended to commit that crime at the time the defendant [entered] [or] [remained in] the building. Whether the defendant intended to commit must be determined from all the circumstances, including the manner and time of [entry] [or] [remaining in] the building, the nature of the building and its contents, any things the defendant may have had with the defendant, and all the other evidence in the case.

[2] Third, the defendant, while in the building, committed the crime of _____, which is a misdemeanor other than to steal.

Fourth, the defendant's act took place on (or about) _____ in _____ County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

CRIMJIG 7.10

"Intentionally"—"With Intent"—Defined

"Intentionally" means that the defendant had the purpose to do the thing or cause the result specified, or believed that the act performed by her, if successful, would cause the result. In addition, the defendant must have knowledge of the facts that make the conduct criminal and knowledge that she had a purpose to do the thing or cause the result specified.

"With intent to" or "with intent that" means that the defendant either had a purpose to do the thing or cause the result specified, or believed that her act, if successful, will cause it.

CRIMJIG 4.01

Liability for Crimes of Another

The defendant is guilty of a crime committed by another person when the defendant has intentionally aided the other person in committing it, or has intentionally advised, hired, counseled, conspired with, or otherwise procured the other person to commit it.

(If the defendant intentionally aided another person in committing a crime, or intentionally advised, hired, counseled, conspired with, or otherwise procured the other person to commit it, the defendant is also guilty of any other crime the other person commits while trying to commit the intended

crime, if that other crime was reasonably foreseeable as a probable consequence of trying to commit the intended crime.)

The defendant is guilty of a crime, however, only if the other person commits a crime. The defendant is not liable criminally for aiding, advising, hiring, counseling, conspiring, or otherwise procuring the commission of a crime, unless some crime (including an attempt) is actually committed.

CRIMJIG 4.02

Effect of Withdrawal

Even if the defendant aided, advised, hired, counseled, or conspired with another, or otherwise procured the commission of a crime by another person, the defendant is not liable for any crime, including the intended crime, if the defendant abandoned the purpose and made a reasonable effort to prevent the crime before the crime was committed.

CRIMJIG 4.03

If the defendant aided, advised, hired, counseled, or conspired with another, or otherwise procured the commission of a crime by another person, and the crime was committed, the defendant is guilty of the crime. You are not to concern yourselves with what action, if any, was taken against the other person.

CRIMJIG 3.18

Accomplice Testimony

You cannot find the defendant guilty of a crime on the testimony of a person who could be charged with that crime, unless that testimony is corroborated by other evidence that tends to convict the defendant of the crime. Such a person who could be charged for the same crime is called an accomplice.

(In this case, ___ (is a) (are) person(s) who could be charged with the same crime as the defendant. You cannot find the defendant guilty of a crime on (his) (her) testimony unless that testimony is corroborated.)

(If you find that (___) (any person who has testified in this case) is a person who could be charged with the same crime as the defendant, you cannot find the defendant guilty of a crime on that testimony, unless that testimony is corroborated.)

The evidence that can corroborate the testimony of an accomplice must do more than merely show that a crime was committed or show the circumstances of the crime, but the corroborating evidence need not convince you by itself that the defendant committed the crime. It is enough that it tends to show that the defendant committed a crime, and that taken with the testimony of an accomplice you are convinced beyond a reasonable doubt that the defendant committed the crime.

The testimony of one accomplice does not corroborate the testimony of another accomplice. Accomplice testimony must be corroborated by evidence other than accomplice testimony before you may find the defendant guilty, but such other evidence may corroborate the testimony of each accomplice.

CRIMJIG 3.19

Identification Testimony—Cautionary Instruction

Testimony has been introduced tending to identify the defendant as the person observed at the time of the alleged offense. You should carefully evaluate this testimony. In doing so, you should consider such factors as the opportunity of the witness to see the person at the time of the alleged offense, the length of time the person was in the witness's view, the circumstances of that view, including light conditions and the distance involved, the stress the witness was under at the time, and the lapse of time between the alleged offense and the identification. (If the witness has seen and identified the person before trial and after the alleged offense, you should also consider the circumstances of that earlier identification, and you should consider whether in this trial the witness's memory is affected by that earlier identification.).⁴

Dated: November 8, 2008

ATTORNEYS FOR DEFENDANT

s/jillclark

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⁴ *State v. Shoop*, 441 N.W.2d 475, 479 (Minn. 1989).