

IN RE THE MATTER OF:

CLERK OF THE SUPERIOR COURT

FILED

02/12/2024 11:51AM

M. Mogel, Deputy

STATE OF ARIZONA

v.

KIPLING DAVID HARRIS

CR2016-132194-001

**PENALTY PHASE
PRELIMINARY JURY INSTRUCTIONS**

HONORABLE GEOFFREY H. FISH

IMPORTANCE OF JURY SERVICE

Jury service is an important part of our system of justice, with a long and distinguished tradition in American law. From the beginning, American law has viewed the jury system as an effective means of drawing on the collective wisdom, experience, and fact-finding abilities of persons such as yourselves. While it may be an occasional inconvenience, or worse, jury service is an important responsibility for you, one, which I am sure, you will take seriously.

NATURE OF HEARING AND DUTIES OF JURY

Members of the jury, at this phase of the sentencing hearing, you will determine whether the defendant will be sentenced to life imprisonment without the possibility of release or death. A previous jury has already found the Defendant guilty of first-degree murder and has also found aggravators that qualify the Defendant for the death penalty. You must accept the findings.

The law that applies is stated in these instructions and it is your duty to follow all of them whether you agree with them or not. You must not single out certain instructions and disregard others.

You must not be influenced at any point in these proceedings by conjecture, passion, prejudice, public opinion or public feeling. You are not to be swayed by mere sympathy not related to the evidence presented during the penalty phase.

You must not be influenced by your personal feelings of bias or prejudice for or against the defendant or any person involved in this case on the basis of anyone's race, color, religion, national ancestry, gender or sexual orientation.

Both the State and the defendant have a right to expect that you will consider all the evidence, follow the law, exercise your discretion conscientiously and reach a just verdict.

I do not mean to indicate any opinion on the evidence or what your verdict should be by any ruling or remark I have made or may make during this penalty phase. I am not allowed to express my feelings in this case, and if I have shown any you must disregard them. You and you alone are the triers of fact.

EVIDENCE

You are to apply the law to the evidence and in this way decide whether the defendant will be sentenced to life imprisonment without the possibility of release or death.

The evidence you shall consider consists of the testimony and exhibits the court admitted in evidence during the trial of this case, during the first part of the sentencing hearing, and during the second part of the sentencing hearing.

It is the duty of the court to rule on the admissibility of evidence. You shall not concern yourselves with the reasons for these rulings. You shall disregard questions and exhibits that were withdrawn or to which objections were sustained.

Evidence that was admitted for a limited purpose shall not be considered for any other purpose.

You shall disregard testimony and exhibits that the court has not admitted, or the court has stricken.

A previous jury has already found the State had proved that statutory aggravating circumstances exist making the defendant eligible for the death sentence. You must accept the findings. During this sentencing hearing, the defendant and the State may present any evidence that is relevant to the determination of whether there is mitigation that is sufficiently substantial to call for a sentence less than death. The State may also present any evidence that demonstrates that the defendant should not be shown leniency, which means a sentence less than death.

Mitigating circumstances may be found from any evidence presented during the trial, during the first part of the sentencing hearing or during the second part of the sentencing hearing.

You should consider all of the evidence without regard to which party presented it. Each party is entitled to consideration of the evidence whether produced by that party or by another party.

You are the sole judges of the credibility of the witnesses and what weight is to be given the testimony of each witness. In considering the testimony of each witness, you may take into account the opportunity and ability of the witness to observe, the witness' memory and manner while testifying, any interest, bias or prejudice the witness may have, the reasonableness of the testimony of the witness considered in a light of all the evidence, and any other factors that bear on credibility and weight.

The attorneys' remarks, statements and arguments are not evidence, but are intended to help you understand the evidence and apply the law.

The attorneys are entitled to make any objections that they deem appropriate. These objections should not influence you, and you should make no assumptions because of objections by the attorneys.

RULINGS OF THE COURT

Admission of evidence in court is governed by rules of law. I will apply those rules and resolve any issues that arise during the trial concerning the admission of evidence.

If an objection to a question is sustained, you must disregard the question and you must not guess what the answer to the question might have been. If an exhibit is offered into evidence and an objection to it is sustained, you must not consider that exhibit as evidence. If testimony is ordered stricken from the record, you must not consider that testimony for any purpose.

Do not concern yourselves with the reasons for my rulings on the admission of evidence. Do not regard those rulings as any indication from me of the credibility of the witnesses or the weight you should give to any evidence that has been admitted.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

Evidence may be direct or circumstantial. Direct evidence is the testimony of a witness who saw, heard, or otherwise sensed an event. Circumstantial evidence is the proof of a fact or facts from which you may find another fact. The law makes no distinction between direct and circumstantial evidence. It is for you to determine the importance to be given to the evidence, regardless of whether it is direct or circumstantial.

BENCH CONFERENCES AND RECESSES

From time to time during the trial, it may become necessary for me to talk with the attorneys out of the hearing of the jury, either by having a conference at the bench when the jury is present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is not to keep relevant information from you, but to decide how certain evidence is to be treated under the rules of evidence and to avoid confusion and error. We will, of course, do what we can to keep the number and length of these conferences to a minimum. I may not always grant an attorney's request for a conference. Do not consider my granting or denying a request for a conference as any indication of my opinion of the case or of what your verdict should be. Please do not be concerned with what we are discussing at any bench conference we may have. Please respect the privacy of those participating in the bench conference in order to maintain the fairness of the trial.

TESTIMONY OF LAW ENFORCEMENT OFFICERS

The testimony of a law enforcement officer is not entitled to any greater or lesser importance or believability merely because of the fact that the witness is a law enforcement officer. You are to consider the testimony of a police officer just as you would the testimony of any other witness.

EXPERT WITNESS

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

In criminal cases, the law does not require a testifying expert witness to draft a written report. However, the law requires a testifying expert to provide for disclosure the results of any physical examination, scientific test, experiment, or comparison conducted by the expert. If the expert will testify at trial without preparing a written report, a summary of the general subject matter and opinions on which the expert is expected to testify shall be provided.

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

MURDER CONVICTIONS AND AGGRAVATING CIRCUMSTANCES

A previous jury found the defendant guilty of two counts of First-Degree Murder (one count First-Degree Premeditated Murder, one count both First-Degree Premeditated Murder and First-Degree Felony Murder), one count of Burglary in the First Degree, one count of Attempt to Commit First Degree Premeditated Murder and one count of Conspiracy to Commit First Degree Premeditated Murder. You must accept these verdicts.

The crime of First-Degree Premeditated Murder required the jury to find the Defendant, acting with premeditation, intentionally or knowingly caused the death of Alice Kuhn and Defendant, acting with premeditation, intentionally or knowingly caused the death of Peggy Kuhn and, either alone or acting with one or more persons, omitted, or attempted to commit Burglary in the First Degree, and in the course of and in furtherance of Burglary in the First Degree or immediate flight from this Burglary in the First Degree, the defendant or another person caused the death of Peggy Kuhn.

The crime of Burglary in the First Degree required the jury to find the Defendant entered or remained unlawfully in the residential structure of the Kuhn residence and the

Defendant intended to commit any theft of felony therein; and the Defendant possessed a firearm.

The crime of Attempt to Commit First-Degree Premeditated Murder required the jury to find the Defendant intentionally engaged in conduct that would have been a crime if the circumstances relating to the crime as the Defendant believed them to be (to wit: First Degree Premeditated Murder of Bob Kuhn) or intentionally committed any act that was a step in a course of conduct that the Defendant believed would end in the commission of a crime. (to wit: First Degree Premeditated Murder of Bob Kuhn).

The crime of Conspiracy to Commit First-Degree Premeditated Murder required the jury to find the Defendant agree with one or more persons that one of them would engage in certain conduct and the Defendant intended to promote or assist in the commission of such conduct and the intended conduct would constitute First-Degree Premeditated Murder, and the Defendant knew that such conduct was a crime.

A prior jury also returned a verdict finding the Defendant eligible for the death penalty because of the following aggravating circumstances:

1. The defendant has been convicted of another offense in the United States, and under Arizona law a sentence of life imprisonment could be or was imposed, to wit: Count 5, Conspiracy to Commit Murder in CR2016-132194-001.
2. The defendant was previously convicted of a serious offense, either preparatory or completed. Convictions for serious offenses committed on the same occasion as the homicide, or not committed on the same occasion but consolidated for trial with the homicide, shall be treated as a serious offense under this paragraph. To wit: Count 3, Burglary in the First Degree in CR 2016-132194-001, and/or Attempted Child Abuse, a class 3 Felony and Dangerous Crime Against Children in CR2005-114803-001.
3. The defendant committed the offense while on probation for a felony offense, to wit: Child Abuse, a class 4 felony in CR 2005-114803-001.
4. The defendant has been convicted of one or more other homicides, and those homicides were committed during the commission of the offense, to wit: Count 1, First Degree Murder (victim Alice Kuhn) and Count 2, First Degree Murder (victim Peggy Kuhn) in CR 2016-132194-001.

A "serious offense," as referred to in these instructions, means any of the following offenses of Burglary in the First Degree and any Dangerous Crime Against Children.

You must accept these verdicts.

MITIGATION

Mitigating circumstances are any factors that are a basis for a life sentence instead of a death sentence, so long as they relate to any sympathetic or other aspect of the defendant's character, propensity, history or record, or circumstances of the offense.

Mitigating circumstances are not an excuse or justification for the offense, but are factors that in fairness or mercy may reduce the defendant's moral culpability.

Mitigating circumstances may be offered by the defendant or State or be apparent from the evidence presented at any phase of these proceedings. You are not required to find that there is a connection between a mitigating circumstance and the crime committed in order to consider the mitigation evidence. Any connection or lack of connection may impact the quality and strength of the mitigation evidence. You must disregard any jury instruction given to you at any other phase of this trial that conflicts with this principle.

The defendant has proposed mitigation for your consideration. These mitigating circumstances may include but are not limited to the following:

1. Premature Birth/Insecure Attachment.
2. Brain Damage/Traumatic Brain Injury.
3. Low Average I.Q.
4. Impaired Executive Function.
5. High Suggestibility.
6. Dysfunctional Family Background.
7. Family History of Domestic Violence.
8. Verbal and Physical Abuse by Father.
9. Inconsistent Parental Stability
10. Death of Mother
11. Exposure to Parental Substance Abuse.
12. Self-Loathing/Self Blame.
13. Lack of Social Skills.
14. Need for Family and Belonging.
15. Good Conduct during Trial.
16. Good behavior during Pretrial Incarceration.
17. Ability to Adapt to a Prison Environment.
18. Cumulative Effect of Mitigation.
19. Deficient in Interpersonal Relationships
20. Parental Abandonment
21. Deficits in Problem Solving
22. Impulse Control Deficits

- 23. Fetal Alcohol Spectrum Disorder
- 24. Family History of Substance Abuse
- 25. Remorse
- 26. Manipulation by Co-Defendant Kimberly LaCount
- 27. The Defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to prosecution.

It is a mitigating circumstance that the defendant's capacity to appreciate the wrongfulness of his conduct, or to conform his conduct to the requirements of law, was significantly impaired, but not so impaired as to constitute a defense to prosecution. The defendant has the burden of proving this mitigating circumstance by a preponderance of the evidence.

"Significantly impaired" means that the defendant suffered from mental illness, personality disorder, character disorder at or near the time of the offense, that substantially reduced the defendant's ability to appreciate the wrongfulness of the conduct or conforming his conduct to the requirements of the law.

If any juror finds by a preponderance of the evidence that the defendant was significantly impaired, then that juror shall consider this impairment as a mitigating circumstance when determining whether to sentence the defendant to life imprisonment or death.

The effect you give to any mitigation is left to your sound discretion in determining whether there are mitigating circumstances sufficiently substantial to call for leniency.

You are not limited to these proposed mitigating circumstances in considering the appropriate sentence. You also may consider anything related to the defendant's character, propensity, history or record, or circumstances of the offense.

The fact that the defendant has been convicted of first-degree murder is unrelated to the existence of mitigating circumstances. You must give independent consideration to all of the evidence concerning mitigating circumstances, despite the conviction.

DUTY TO CONSULT ONE ANOTHER

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a just verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to re-examine your own views and change your opinion if you become convinced that it is wrong. However, you should not change your honest belief concerning the weight or effect of the evidence solely because of the opinions of your fellow jurors, or for the mere purpose of returning a verdict.

VICTIM IMPACT INFORMATION

A relative of the victim may make a statement relating to personal characteristics and uniqueness of the victim and the impact of the murder on the victim's family. You may consider this information to the extent that it rebuts mitigation. You may not consider the information as a new aggravating circumstance.

MITIGATION ASSESSMENT AND THE SENTENCE BURDEN OF PROOF

You do not need to unanimously agree on a particular mitigating circumstance. Each one of you must decide individually whether any mitigating circumstance exists.

You are not limited to the mitigating circumstances offered by the defendant. You must also consider any other information that you find is relevant in determining whether to impose a life sentence, so long as it relates to an aspect of the defendant's background, character, propensities, record, or circumstances of the offense.

The defendant bears the burden of proving the existence of any mitigating circumstance that the defendant offers by a preponderance of the evidence. That is, although the defendant need not prove its existence beyond a reasonable doubt, the defendant must convince you by the evidence presented that it is more probably true than not true that such a mitigating circumstance exists. In proving a mitigating circumstance, the defendant may rely on any evidence already presented and is not required to present additional evidence.

You individually determine whether mitigation exists. In light of the aggravating circumstances you have found, you must then individually determine if the total of the mitigation is sufficiently substantial to call for leniency. "Sufficiently substantial to call for leniency" means that mitigation must be of such quality or value that it is adequate, in the opinion of an individual juror, to persuade that juror to vote for a sentence of life in prison.

Even if a juror believes that the aggravating and mitigating circumstances are of the same quality or value, that juror is not required to vote for a sentence of death and may instead vote for a sentence of life in prison. A juror may find mitigation and impose a life sentence even if the defendant does not present any mitigation evidence.

A mitigating factor that motivates one juror to vote for a sentence of life in prison may be evaluated by another juror as not having been proved or, if proved, as not significant to the assessment of the appropriate penalty. In other words, each of you must determine whether, in your individual assessment, the mitigation is of such quality or value that it warrants leniency in this case.

The law does not presume what is the appropriate sentence. The defendant does not have the burden of proving that life is the appropriate sentence. The State does not have the burden of proving that death is the appropriate sentence. It is for you, as jurors, to decide what you individually believe is the appropriate sentence.

In reaching a reasoned, moral judgment about which sentence is justified and appropriate, you must decide whether the totality of the mitigating factors is sufficiently substantial to call for leniency. To do this, you must consider the quality and the strength of aggravating and mitigating factors, as well as the facts and circumstances of the case. This assessment is not a mathematical one, but instead must be made in light of each juror's individual, qualitative evaluation of the facts and circumstances of the case, the severity of the aggravating factors, and the quality or value of the mitigating factors found by each juror.

If you unanimously agree there is mitigation sufficiently substantial to call for leniency, then you shall return a verdict of life. If you unanimously agree there is no mitigation, or the mitigation is not sufficiently substantial to call for leniency, then you shall return a verdict of death.

Your decision is not a recommendation. Your decision is binding. If you unanimously find that the defendant should be sentenced to life imprisonment, your foreperson shall sign the verdict form indicating your decision. If you unanimously find that the defendant should be sentenced to death, your foreperson shall sign the verdict form indicating your decision. If you cannot unanimously agree on the appropriate sentence, your foreperson shall tell the judge.

ORDER OF THIS PHASE

This phase of the trial, unless otherwise directed by the court, will proceed as follows:

The defense may make an opening statement. The State may then make an opening statement or may defer until the close of the defense case. Again, what counsel says in opening statements is not evidence.

The State may present a summary of the evidence of the crimes and the aggravators found by a prior jury.

The victims' relatives may make a statement relating to the personal characteristics of the victims and the impact of their murder on the family. Victim impact evidence is not an aggravating circumstance, and you cannot consider it as such. Victim impact evidence may be considered to rebut the mitigation presented. You are to consider this information only for this limited purpose.

The defense may offer evidence in support of mitigation.

The State may make an opening statement if it was deferred, and may offer evidence to demonstrate that the defendant should not be shown leniency. This evidence is not a new aggravating circumstance.

The defense may offer evidence in rebuttal to the State's evidence.

The defendant may make a statement, but he is not required to do so. You cannot hold this against him if he chooses to not make a statement.

The court will then give you the final instructions on the law.

The parties will present final arguments, with the defense having the opportunity to make an opening and a closing argument.

You will then deliberate to decide on a verdict. Once you agree on a verdict, you will return to court where the verdict will be read with the parties present.

JURY NOT TO CONSIDER FINANCIAL COST OF PENALTY

You must decide the appropriate sentence based on the facts of the case and by applying these jury instructions. You must not consider the financial cost of any possible punishment when deciding whether to sentence the defendant to life in prison or death.

LIFE SENTENCE

If Defendant is sentenced to "Life," then he will be sentenced to "Life without the possibility of release from prison." "Life without the possibility of release from prison" means exactly what it says. The sentence of "life without possibility of release from prison" means the Defendant will never be eligible to be released from prison for any reason for the rest of the Defendant's life.

STATE'S EVIDENCE

The defendant and the state may present any evidence that is relevant to the determination of whether there is mitigation that is sufficiently substantial to call for leniency. Regardless of whether defendant presents evidence of mitigation, the State may present any evidence that demonstrates that defendant should not be shown leniency. This evidence may include evidence regarding defendant's character, propensities, criminal record or other acts. You may individually consider the State's evidence in determining the existence of a mitigating circumstance or in assessing its quality or value. You shall not consider this part of the state's evidence as aggravation, but only in determining whether defendant should be shown leniency.

ADMONITION

I am now going to say a few words about your conduct as jurors. I am going to give you some dos and don'ts, mostly don'ts, which I will call "The Admonition."

Do wear your juror badge at all times in and around the courthouse so everyone will know you are on a jury.

Each of you has gained knowledge and information from the experiences you have had prior to this trial. Once this trial has begun you are to determine the facts of this case only from the evidence that is presented in this courtroom. Arizona law prohibits a juror from receiving evidence not properly admitted at trial. Therefore, do not do any research or make any investigation about the case on your own. Do not view or visit the locations where the events of the case took place. Do not consult any source such as a newspaper, a dictionary, a reference manual, television, radio, or the Internet for information. If you have a question or need additional information, submit your request **in writing** and I will discuss it with the attorneys.

Do not talk to anyone about the case, or about anyone who has anything to do with it, and do not let anyone talk to you about those matters, until the trial has ended, and you have been discharged as jurors. This prohibition about not discussing the case includes using e-mail, Facebook, Twitter, Instagram, instant messaging, tablets and i-Pads, mobile phones of all sorts (Androids, i-Phones, etc.), all internet search engines (Google, Yahoo, Chrome, etc.) or any other form of electronic communication for any purpose whatsoever, if it relates in any way to this case. This includes, but is not limited to, blogging about the case or your experience as a juror on this case, discussing the evidence, the lawyers, the parties, the court, your deliberations, your reactions to testimony or exhibits or any aspect of the case or your courtroom experience with anyone whatsoever, until the trial has ended, and you have been discharged as jurors. Until then, you may tell people you are on a jury, and you may tell them the estimated schedule for the trial, but do not tell them anything else except to say that you cannot talk about the trial until it is over.

One reason for these prohibitions is because the trial process works by each side knowing exactly what evidence is being considered by you and what law you are applying to the facts you find. As I previously told you, the only evidence you are to consider in this matter is that which is introduced in the courtroom. The law that you are to apply is the law that I give you in the final instructions. This prohibits you from consulting any outside source.

If you have cell phones, laptops, or other communication devices, please turn them off and do not turn them on while in the courtroom. You may use them only during breaks, so long as you do not use them to communicate about any matter having to do with the case. You are not permitted to take notes with laptops, tape recorders or any other electronic device. You are only permitted to take notes on the notepad provided by the court. Devices that can take pictures are prohibited and may not be used for any purpose.

It is your duty not to speak with or permit yourselves to be addressed by any person on any subject connected with the trial. If someone should try to talk to you about the case, stop him or her or walk away. If you should overhear others talking about the case,

stop them or walk away. If anything like this does happen, report it to me or any member of my staff as soon as you can. To avoid even the appearance of improper conduct, do not talk to any of the parties, the lawyers, the witnesses, or media representatives (if any) about anything until the case is over, even if your conversation with them has nothing to do with the case. For example, if you passed an attorney in the hall and asked what good restaurants there are downtown, somebody from a distance may think you are talking about the case. So, again, please avoid even the appearance of improper conduct.

The lawyers and parties have been given the same instruction about not speaking with jurors, so do not think they are being unfriendly to you. When you go home tonight and family and friends ask what the case is about, remember you cannot speak with them about the case. All you can tell them is that you are on a jury, the estimated schedule for the trial, and that you cannot talk about the case until it is over.

In a civil case, the jurors are permitted to discuss the evidence during the trial while the trial progresses. In a criminal case such as this, however, the jurors are not permitted to discuss the evidence until all the evidence has been presented and the jurors have retired to deliberate on the verdict. You may not discuss the evidence among yourselves until you retire to deliberate on your verdict. Therefore, during breaks and recesses whether you are assembled in the jury room or not, you must not discuss any aspect of the case with each other until the case is submitted to you for your deliberations at the end of the trial. Again, if you have a question or need additional information, submit your request in writing and I will discuss it with the attorneys.

During the trial, you are not to engage in any conduct that impairs or interferes with your ability to hear and understand the court proceedings.

Do not form final opinions about any fact or about the outcome of the case until you have heard and considered all of the evidence, the closing arguments, and the rest of the instructions I will give you on the law. Keep an open mind during the trial. Form your final opinions only after you have had an opportunity to discuss the case with each other in the jury room at the end of the trial.

Please advise me in writing immediately if you believe that any juror has violated any provision of this admonition.

Before each recess, I will not repeat the entire Admonition I have just given you. I will probably refer to it by saying, "Please remember the Admonition," or something like that. However, even if I forget to make any reference to it, remember that the Admonition still applies at all times during the trial.

DEFENDANT NEED NOT TESTIFY

The Defendant is not required to testify or make any statement and you are precluded from drawing any inferences against him should he decide not to testify or make a statement. The decision on whether or not to testify or make a statement is left to the Defendant, acting with the advice of his attorneys. You must not let this choice affect your deliberation in any way.

JURY QUESTIONS

If at any time during the trial you have difficulty hearing or seeing something that you should be hearing or seeing, or if you get into personal distress for any reason, raise your hand and let me know.

If you have any questions about parking, restaurants, or other matters relating to jury service, feel free to ask one of the court staff. But remember that the Admonition applies to court staff, as it does to everyone else, so do not try to discuss the case with court staff.

If you have a question about the case for a witness or for me, write it down, but do not sign it. Hand the question to the courtroom assistant. If your question is for a witness who is about to leave the witness stand, please signal the courtroom assistant or me before the witness leaves the stand. Once the witness is excused, there will not be an opportunity to ask that witness anymore questions. Therefore, if you have any questions for that witness, you must let me know that you have questions before the witness is excused.

You are to submit the question independently, and you are not to discuss the question among yourselves before submitting it. The purpose of a question is to clarify the evidence that has been presented. It is not to explore theories of your own. Additionally, please review your question before giving it to the Court to review because the witness may have answered your question after you wrote the question.

The lawyers and I will discuss the question. The rules of evidence or other rules of law may prevent some questions from being asked. If the rules permit the question and the answer is available, an answer will be given at the earliest opportunity. When we do not ask a question, it is no reflection on the person submitting it. You should attach no significance to the failure to ask a question. I will apply the same legal standards to your questions as I do to the questions asked by the lawyers. If a particular question is not asked, please do not guess why or what the answer might have been.

NO TRANSCRIPT AVAILABLE TO JURY; TAKING NOTES

At the end of the trial, you will have to make your decision based on what you recall of the evidence. You will not be given a written transcript of any testimony; you should pay close attention to the testimony as it is given.

You have been provided with note pads and pens. The court encourages you to take notes during the trial if you wish to do so. Do not let note taking distract you so that you miss hearing or seeing other testimony. You may use your notes during your deliberations at the end of the trial. Until then, keep your notes to yourself. During recesses in the trial, you may leave your notes on your seat. Your notes are confidential and my courtroom assistant will guard them. No one will be allowed to read your notes. Whether you take notes or not, you should rely upon your own memory of what was said and not be overly influenced by the

notes of other jurors. After you have rendered your verdict, the courtroom assistant will collect your notes and destroy them.

Do not be influenced at all by my taking notes at times and working on the computer at times. What I am doing may have nothing to do with what you will be concerned with at this trial.

EXCLUSION OF WITNESSES

The Rule of Exclusion of Witnesses is in effect and will be observed by all witnesses until the trial is over and a result announced. This means that all witnesses will remain outside the courtroom during the entire trial except when one is called to the witness stand. They will wait in the areas directed by the courtroom assistant unless other arrangements have been made with the attorney who has called them. The rule also forbids witnesses from telling anyone but the lawyers what they will testify about or what they have testified to. If witnesses do talk to the lawyers about their testimony, other witnesses and jurors should avoid being present or overhearing.

The lawyers are directed to inform all their witnesses of these rules and to remind them of their obligations from time to time, as may be necessary. The parties and their lawyers should keep a careful lookout to prevent any potential witness from remaining in the courtroom if they accidentally enter.

The only exceptions to this rule are that each side is allowed to designate one investigator to sit through the trial. The alleged victim is also allowed to sit through the trial even though the victim may testify at trial.

KEEP AN OPEN MIND

Do not form final opinions about any fact or about the outcome of the case until you have heard and considered all of the evidence, the closing arguments, and the rest of the instructions I will give you on the law. Keep an open mind. Form your final opinions only after you have had an opportunity to discuss the case with each other in the jury room at the end of this phase of the trial.

MEDIA COVERAGE

There may or may not be news media coverage of the trial. What the news media covers is up to them. If there is media coverage, you must avoid it during the trial. If you do encounter something about this case in the news media during the trial, end your exposure to it immediately and report to me as soon as you can. If there are cameras in the courtroom

during the trial, do not be concerned about them. Court rules require that the proceedings be photographed or televised in such a way that no juror can be recognized.

PRESENCE OF A DEPUTY

Deputies are assigned to courtrooms by the sheriff's office. A deputy's presence in this courtroom should not be considered by you for any purpose, influence your view of the evidence, or impact your deliberations in anyway.

SCHEDULING DURING TRIAL

There are some additional specific matters that pertain specifically to this trial.

You all have received a calendar of trial days. The trial is expected to last no later than Thursday, June 27, 2024, and hopefully will end sooner than that. We will all do our best to move the case along but delays frequently occur. These won't be anyone's fault, so please don't hold them against the parties. Delays usually occur because the attorneys and I often need to resolve certain legal matters before these matters may be presented to you in court or because I am busy with matters in other cases.

The usual hours of trial will be from 10:30 a.m. to noon and 1:30 p.m. to 4:30 p.m. **We will not be in trial on Fridays**, as the Court has other matters that it must hear on those days. **We also have built in breaks and days off that were previously provided to you and will provide again.** If there will be other days besides Fridays that we will not be in trial, we will let you know as soon as possible.

We will take a short recess every mid-afternoon and occasional stretch breaks in place. Unless a different starting time is announced prior to recessing for the evening, you may assume a starting time as indicated on your trial calendar. If you need another trial calendar, please inform my courtroom assistant.

At the beginning of each day of trial, please assemble in the designated jury waiting area of the lobby on the 7th floor. One of my staff members will come to get you. Please do not come into the courtroom or into the back hallway until my staff comes to get you. We want to make sure that none of the jurors see or hear something that they are not supposed to see or hear.

ALTERNATE JURORS

The law provides for a jury of 12 persons in a case such as this. We have more than this number of jurors so that, if a juror becomes ill or has a personal emergency, the trial can continue without that juror.

At the end of the case, one or more alternate jurors will be determined by lot in a drawing held in open court. So, at this time, we do not know if there will be any alternates,

or who the alternate or alternates will be. Please do not be concerned with who may or may not be chosen as an alternate at the end of the case.

FINAL INSTRUCTIONS AND VERDICT FORM

After the presentation of evidence is finished, the court will give you final instructions on law to be applied by you in making decisions in this phase of the proceeding. These preliminary instructions will remain in effect unless changed by the final instructions.