STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF GENERAL SESSIONS NINTH JUDICIAL CIRCUIT INDICTMENT NO.: 2015-GS-10-03466
STATE OF SOUTH CAROLINA,	)	
V.	)	**JURY CHARGE**
MICHAEL THOMAS SLAGER, DEFENDANT.	)	

MISTER FOREMAN AND MEMBERS OF THE JURY, YOU HAVE HEARD THE TESTIMONY, RECEIVED THE EVIDENCE, AND HEARD THE ARGUMENTS OF THE STATE AND THE DEFENDANT. I WILL NOW EXPLAIN TO YOU THE LAW THAT APPLIES TO THIS CASE.

UNDER THE CONSTITUTION AND LAWS OF SOUTH CAROLINA, YOU ARE THE FINDERS OF THE FACTS IN THIS CASE. I DO NOT HAVE THE RIGHT TO PASS UPON THE FACTS OR TO EVEN EXPRESS ANY OPINION THAT I MIGHT HAVE AS TO THEM BECAUSE THIS IS A MATTER SOLELY FOR YOU, THE JURY, TO DETERMINE. AS JURORS, THEN, IT IS YOUR DUTY TO DETERMINE THE EFFECT, THE VALUE, THE WEIGHT, AND THE TRUTH OF THE EVIDENCE PRESENTED DURING THIS TRIAL.

FUNCTION OF TRIAL JUDGE

NOW, AS THE TRIAL JUDGE, IT IS MY RESPONSIBILITY TO PRESIDE OVER THE TRIAL OF THIS CASE AND TO RULE UPON THE ADMISSIBILITY OF THE EVIDENCE OFFERED DURING THE TRIAL. YOU ARE TO CONSIDER ONLY THE TESTIMONY WHICH HAS BEEN PRESENTED FROM THIS WITNESS STAND TOGETHER WITH ANY EXHIBITS AND STIPULATIONS WHICH HAVE BEEN MADE A PART OF THE RECORD.

ADDITIONALLY, I HAVE THE DUTY TO CHARGE YOU THE LAW APPLICABLE TO THIS CASE AND, AS THE PRESIDING JUDGE, I AM THE SOLE JUDGE OF THE LAW OF THIS CASE. IT IS YOUR DUTY AS JURORS TO ACCEPT AS CORRECT AND APPLY THE LAW AS I NOW STATE IT TO YOU AND THEN REACH YOUR VERDICT. FINALLY, I CHARGE YOU IN THIS REGARD THAT YOU SHOULD NOT BE CONCERNED WITH WHAT YOU THINK THE LAW OUGHT TO BE, BUT RATHER WHAT I CHARGE YOU THAT THE LAW IS.

CREDIBILITY

YOU ARE ALSO THE JUDGES, THE SOLE JUDGES, OF THE CREDIBILITY. THAT IS, THE BELIEVABILITY, OF THE WITNESSES WHO HAVE TESTIFIED AND OF THE EVIDENCE WHICH HAS BEEN PRESENTED DURING THIS TRIAL. IN EVALUATING CREDIBILITY, YOU MAY TAKE INTO CONSIDERATION MANY THINGS, SUCH AS:

(1) THE DEMEANOR OR MANNER OF TESTIFYING;

(2) WHETHER THE WITNESS HAD REASON TO BE BIASED OR PREJUDICED; OR

(3) WHETHER THE TESTIMONY OF A WITNESS WAS CONTRADICTED, ON THE ONE HAND OR SUPPORTED AND CORROBORATED, ON THE OTHER HAND.

IT BECOMES YOUR DUTY AS JURORS TO ANALYZE AND TO EVALUATE THE EVIDENCE AND DETERMINE THAT EVIDENCE WHICH CONVINCES YOU OF ITS TRUTH.

ARGUMENT OF COUNSEL

WHILE ARGUMENT OF COUNSEL IS A BENEFICIAL PART OF EVERY TRIAL, YOU SHOULD REMEMBER THAT THE STATEMENTS MADE BY COUNSEL ARE NOT EVIDENCE. IN PRESENTING ARGUMENTS, COUNSEL OFTEN REFER TO THE EVIDENCE. HOWEVER, YOU SHOULD BASE YOUR VERDICT ON THE EVIDENCE AS YOU REMEMBER IT. THEREFORE, IF THERE ARE ANY CONFLICTS BETWEEN THE RECOLLECTION OF COUNSEL ABOUT THE EVIDENCE AND YOUR OWN RECOLLECTION, YOU SHOULD RELY UPON YOUR OWN UNDERSTANDING OF THE EVIDENCE.

CHARGE AND INDICTMENT NOT EVIDENCE

THE FACT THAT THE DEFENDANT, MICHAEL THOMAS SLAGER, WAS CHARGED AND INDICTED IN THIS CASE IS NOT EVIDENCE IN THIS CASE AND CANNOT BE CONSIDERED BY YOU AS EVIDENCE OF GUILT IN THIS CASE, NOR DOES IT CREATE ANY PRESUMPTION OR INFERENCE OF GUILT. THIS INDICTMENT IS SIMPLY THE FORMAL WRITTEN INSTRUMENT WHICH CONTAINS THE CHARGE MADE AGAINST THE DEFENDANT. THIS INDICTMENT IS THE FORMAL DOCUMENT BY WHICH THIS CASE IS BROUGHT INTO THIS COURT.

PRESUMPTION OF INNOCENCE

THE DEFENDANT HAS PLED NOT GUILTY TO THE CHARGE ALLEGED AGAINST HIM. THE BURDEN IS ON THE STATE TO PROVE THE DEFENDANT GUILTY. A PERSON CHARGED WITH COMMITTING A CRIMINAL OFFENSE IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE HIMSELF INNOCENT.

I CHARGE YOU THAT IT IS AN IMPORTANT RULE OF THE LAW THAT THE DEFENDANT IN A CRIMINAL TRIAL, NO MATTER THE SERIOUSNESS OF THE CHARGE, WILL ALWAYS BE PRESUMED TO BE INNOCENT OF THE CRIME FOR WHICH THE INDICTMENT WAS ISSUED UNLESS GUILT HAS BEEN PROVEN BY EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE DOUBT. THIS PRESUMPTION OF INNOCENCE DOES NOT END WHEN YOU BEGIN YOUR DELIBERATIONS BUT IT ACCOMPANIES THE DEFENDANT THROUGHOUT THE TRIAL UNTIL YOU REACH A VERDICT OF GUILT BASED ON EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE DOUBT.

THE PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF THE DEFENDANT WHICH REMAINS WITH THE DEFENDANT UNTIL IT HAS BEEN STRIPPED FROM THE DEFENDANT BY EVIDENCE SATISFYING YOU OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT.

THE PRESUMPTION OF INNOCENCE IS NOT MERE LEGAL THEORY. IT IS NOT JUST A LEGAL PHRASE. IT IS A SUBSTANTIAL RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED UNLESS YOU, THE JURY, IS SATISFIED FROM THE EVIDENCE OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT.

REASONABLE DOUBT

THE STATE MUST PROVE THE DEFENDANT GUILTY BEYOND A REASONBLE DOUBT. WHAT IS A REASONABLE DOUBT IN THE LAW? A REASONABLE DOUBT IS A DOUBT WHICH MAKES AN HONEST, SINCERE, CONSCIENTIOUS JUROR IN SEARCH OF THE TRUTH IN THE CASE TO HESITATE TO ACT. PROOF BEYOND A REASONABLE DOUBT MUST THEREFORE BE PROOF OF SUCH A CONVINCING CHARACTER THAT A REASONABLE PERSON WOULD NOT HESITATE TO RELY AND ACT UPON IT IN THE MOST IMPORTANT OF HIS OR HER OWN AFFAIRS.

PROOF BEYOND A REASONABLE DOUBT CAN ALSO BE DESCRIBED AS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE GUILT OF THE DEFENDANT. NOW, THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE KNOW WITH ABSOLUTE CERTAINTY AND IN CRIMINAL CASES THE LAW DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF, BASED ON YOUR CONSIDERATION OF THE EVIDENCE YOU ARE FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF THE CHARGE AGAINST HIM, YOU MUST FIND HIM GUILTY. IF, ON THE OTHER HAND, YOU THINK THERE IS A REAL POSSIBILITY THAT HE IS NOT GUILTY, YOU MUST GIVE HIM THE BENEFIT OF THE DOUBT AND FIND HIM NOT GUILTY.

INTENT

IN ORDER TO ESTABLISH CRIMINAL LIABILITY, CRIMINAL INTENT IS REQUIRED. FOR EXAMPLE, THE MENTAL STATE REQUIRED TO BE PROVEN BY THE STATE FOR A PARTICULAR CRIME MIGHT BE PURPOSE, INTENT, KNOWLEDGE, RECKLESSNESS, OR CRIMINAL NEGLIGENCE. CRIMINAL INTENT MUST BE PROVEN BY THE STATE BEYOND A REASONABLE DOUBT. CRIMINAL INTENT IS ALWAYS A MATTER THAT MUST BE DETERMINED BY THE JURY FROM THE CIRCUMSTANCES SURROUNDING THE SITUATION. THERE IS NO WAY TO PROVE INTENT TO A MATHEMATICAL CERTAINTY. THERE IS NO WAY MEDICAL SCIENCE CAN DISSECT A PERSON'S BRAIN AND DETERMINE WHAT THE PERSON HAD IN MIND, SO THE LAW SAYS THAT CRIMINAL INTENT MAY BE INFERRED FROM THE CIRCUMSTANCES SHOWN TO HAVE EXISTED. THIS IS HOW YOU MAKE A DETERMINATION OF WHETHER OR NOT THE ELEMENT REQUIRING INTENT WAS PRESENT. IT IS NOT NECESSARY TO ESTABLISH INTENT BY DIRECT AND POSITIVE EVIDENCE, BUT INTENT MAY BE ESTABLISHED BY INFERENCE IN THE SAME WAY AS ANY OTHER FACT BY TAKING INTO CONSIDERATION THE ACTS OF THE PARTIES AND ALL THE FACTS AND CIRCUMSTANCES OF THE CASE.

CRIMINAL INTENT IS A MENTAL STATE, A CONSCIOUS WRONGDOING. IT IS UP TO YOU TO DETERMINE WHAT THE DEFENDANT INTENDED TO DO BASED ON THE CIRCUMSTANCES SHOWN TO HAVE EXISTED.

CRIMINAL INTENT CAN ARISE FROM ACTION OR A FAILURE TO ACT. IT MAY ARISE FROM NEGLIGENCE, RECKLESSNESS, OR AN INDIFFERENCE TO DUTY OR TO CONSEQUENCES THAT IS CONSIDERED BY THE LAW TO BE THE EQUIVALENT OF CRIMINAL INTENT.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

THERE ARE TWO TYPES OF EVIDENCE WHICH ARE GENERALLY PRESENTED DURING A TRIAL-DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO ASSERTS OR CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN EYEWITNESS. CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT. THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. NOR IS A GREATER DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT EVIDENCE. YOU SHOULD WEIGH ALL THE EVIDENCE IN THE CASE. AFTER WEIGHING ALL THE EVIDENCE, IF YOU ARE NOT CONVINCED OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT, YOU MUST FIND THE DEFENDANT NOT GUILTY.

EXPERT WITNESSES

NORMALLY, A PERSON CANNOT GIVE OPINION TESTIMONY. NORMALLY, WHEN A PERSON TESTIFIES THEY MUST TESTIFY AS TO WHAT THEY EITHER SAW, HEARD, SENSED BY SMELL, OR SOMETHING OF THAT NATURE. HOWEVER, THERE IS AN EXCEPTION WHEN SOMEONE IS QUALIFIED BECAUSE OF EDUCATION OR EXPERIENCE. THEY ARE PERMITTED TO GIVE THEIR OPINION IN CERTAIN AREAS IF THE COURT QUALIFIES THEM THAT WAY. IN THIS CASE WITNESSES HAVE BEEN QUALIFIED TO GIVE OPINION TESTIMONY. THIS DOES NOT MEAN THAT YOU MUST ACCEPT THE OPINION, BUT IT IS EVIDENCE FOR YOU TO USE IN ANY WAY YOU SEE FIT AND FOR YOU TO GIVE IT THE WEIGHT AND CREDIBILITY YOU BELIEVE IS APPROPRIATE.

STATEMENT OF DEFENDANT

A STATEMENT ALLEGED TO HAVE BEEN MADE BY THE DEFENDANT HAS BEEN ADMITTED INTO EVIDENCE IN THIS CASE. WHILE THE COURT HAS DETERMINED THAT THE STATEMENT IS ADMISSIBLE, I INSTRUCT YOU THAT YOU MAKE THE ULTIMATE DECISION OF WHETHER OR NOT THE DEFENDANT MADE THE STATEMENT. IF THE DEFENDANT DID MAKE THE STATEMENT, YOU MUST DETERMINE WHETHER THE STATEMENT WAS MADE BY THE DEFENDANT VOLUNTARILY AND OF HIS OWN FREE WILL. THIS MEANS THAT THE STATEMENT WAS NOT CAUSED BY PRESSURE, FORCE, FEAR, THREATS, COERCION, OR INTIMIDATION, OR BY HOPE OR A PROMISE OF LENIENCY OR A REWARD OF ANY KIND. IN DETERMINING WHETHER THE STATEMENT WAS VOLUNTARY, YOU SHOULD CONSIDER BOTH THE CHARACTERISTICS OF THE DEFENDANT AND THE DETAILS OF THE QUESTIONING.

SOME OF THE FACTORS THAT YOU MUST CONSIDER ARE: (1) THE AGE OF THE DEFENDANT; (2) THE DEFENDANT'S EDUCATION OR LACK OF EDUCATION; (3) THE DEFENDANT'S MENTAL ABILITY OR CAPACITY; (4) THE DEFENDANT'S I.Q. OR INTELLIGENCE; (5) THE DEFENDANT'S BACKGROUND AND ENVIRONMENT; (6) THE PLACE AND LENGTH OF DETENTION; (7) THE NATURE OF THE QUESTIONING; AND (8) THE ADVICE, OR LACK THEREOF, TO THE DEFENDANT OF HIS CONSTITUTIONAL RIGHTS INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO REMAIN SILENT; THAT ANY STATEMENT COULD BE USED AGAINST HIM IN A COURT OF LAW; THE RIGHT TO HAVE A LAWYER PRESENT; THAT IF HE COULD NOT AFFORD A LAWYER, A LAWYER WOULD BE APPOINTED TO REPRESENT HIM WITHOUT ANY COST; AND THAT HE COULD STOP MAKING A STATEMENT AT ANY

TIME. YOU MUST CAREFULLY CONSIDER ALL OF THE SURROUNDING CIRCUMSTANCES BEFORE YOU GIVE ANY WEIGHT TO AN ALLEGED STATEMENT.

THE STATE HAS THE BURDEN OF PROVING BEYOND A REASONABLE DOUBT THAT THE ALLEGED STATEMENT WAS VOLUNTARY. IF YOU DETERMINE IT WAS, YOU MAY GIVE THE STATEMENT ANY FURTHER CONSIDERATION THAT YOU DEEM PROPER. YOU MUST DECIDE WHAT WEIGHT, IF ANY, SHOULD BE GIVEN TO THE ALLEGED STATEMENT. IF YOU DETERMINE THE ALLEGED STATEMENT WAS NOT THE FREE AND VOLUNTARY STATEMENT OF THE DEFENDANT, YOU SHOULD NOT CONSIDER THE STATEMENT AT ALL.

MURDER

THE DEFENDANT IS CHARGED WITH MURDER. THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT KILLED ANOTHER PERSON WITH MALICE AFORETHOUGHT.

MALICE IS HATRED, ILL-WILL, OR HOSTILITY TOWARDS ANOTHER PERSON. IT IS THE INTENTIONAL DOING OF A WRONGFUL ACT WITHOUT JUST CAUSE OR EXCUSE AND WITH AN INTENT TO INFLICT AN INJURY OR UNDER CIRCUMSTANCES THAT THE LAW WILL INFER AN EVIL INTENT.

MALICE AFORETHOUGHT DOES NOT REQUIRE THAT MALICE EXISTS FOR ANY PARTICULAR TIME BEFORE THE ACT IS COMMITTED, BUT MALICE MUST EXIST IN THE MIND OF THE DEFENDANT JUST BEFORE AND AT THE TIME THE ACT IS COMMITTED. THEREFORE, THERE MUST BE A COMBINATION OF THE PREVIOUS EVIL INTENT AND THE ACT.

MALICE AFORETHOUGHT MAY BE EXPRESSED OR INFERRED. THESE TERMS, "EXPRESS" AND "INFERRED" DO NOT MEAN DIFFERENT KINDS OF MALICE BUT MERELY THE MANNER IN WHICH MALICE MAY BE SHOWN TO EXIST. THAT IS EITHER BY DIRECT EVIDENCE OR BY INFERENCE FROM THE FACTS AND CIRCUMSTANCES WHICH ARE PROVED. EXPRESS MALICE IS SHOWN WHEN A PERSON SPEAKS WORDS WHICH EXPRESS HATRED OR ILL WILL TOWARD ANOTHER OR WHEN THE PERSON PREPARED BEFOREHAND TO DO THE ACT WHICH WAS LATER ACCOMPLISHED; FOR EXAMPLE, LYING IN WAIT FOR A PERSON OR ANY OTHER ACTS OF PREPARATION GOING TO SHOW THAT THE DEED WAS WITHIN THE DEFENDANT'S MIND WOULD BE EXPRESS MALICE.

MALICE MAY BE INFERRED FROM CONDUCT SHOWING A TOTAL DISREGARD FOR HUMAN LIFE.

VOLUNTARY MANSLAUGHTER

IF YOU DETERMINE THAT THE STATE HAS NOT PROVEN MURDER BEYOND A REASONABLE DOUBT, YOU SHOULD THEN CONSIDER WHETHER THE STATE HAS PROVEN BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS GUILTY OF THE LESSER INCLUDED OFFENSE OF: VOLUNTARY MANSLAUGHTER. OF COURSE, YOU CANNOT FIND THE DEFENDANT GUILTY OF ANY OFFENSE UNLESS YOU ARE CONVINCED OF GUILT BEYOND A REASONABLE DOUBT.

TO PROVE VOLUNTARY MANSLAUGHTER, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT TOOK THE LIFE OF ANOTHER IN THE SUDDEN HEAT OF PASSION BASED ON SUFFICIENT LEGAL PROVOCATION. BOTH HEAT OF PASSION AND SUFFICIENT LEGAL PROVOCATION MUST BE PRESENT AT THE TIME OF THE KILLING TO CONSTITUTE VOLUNTARY MANSLAUGHTER.

SUDDEN HEAT OF PASSION MAY, FOR A TIME, AFFECT A PERSON'S SELF-CONTROL AND TEMPORARILY DISTURB A PERSON'S REASON. THE SUDDEN HEAT OF PASSION MUST BE THE TYPE THAT WOULD MAKE AN ORDINARY PERSON UNABLE TO COOLY REFLECT ON HIS ACTIONS AND WOULD PRODUCE AN UNCONTROLLABLE IMPULSE TO DO VIOLENCE.

SUFFICIENT LEGAL PROVOCATION MUST BE THE TYPE THAT WOULD MAKE A PERSON OF ORDINARY REASON AND CAUTION BECOME ENRAGED AND TO LOSE CONTROL TEMPORARILY. THE PROVOCATION NEEDED FOR VOLUNTARY MANSLAUGHTER MUST COME FROM SOME ACT OF, OR RELATED TO, THE VICTIM.

WORDS ALONE, HOWEVER VULGAR OR INSULTING, ARE NOT ENOUGH TO BE LEGAL PROVOCATION. WHERE DEATH IS CAUSED BY THE USE OF A DEADLY WEAPON, THE WORDS MUST BE ACCOMPANIED BY SOME OVERT, THREATENING ACT WHICH COULD HAVE PRODUCED THE HEAT OF PASSION.

THE EXERCISE OF A LEGAL RIGHT, NO MATTER HOW OFFENSIVE IT IS TO ANOTHER, IS NEVER SUFFICIENT LEGAL PROVOCATION FOR VOLUNTARY MANSLAUGHTER.

IF THE HEAT OF PASSION HAD COOLED, OR IF THERE WAS ENOUGH TIME BETWEEN THE PROVOCATION, IF ANY, AND THE KILLING FOR THE PASSION OF A REASONABLE PERSON TO COOL, THE KILLING WOULD NOT BE VOLUNTARY MANSLAUGHTER. IN DECIDING WHETHER A REASONABLE PERSON WOULD HAVE HAD ENOUGH TIME TO COOL OFF, YOU SHOULD CONSIDER ALL THE CIRCUMSTANCES SURROUNDING THE KILLING. YOU MAY CONSIDER THE NATURE OF THE PROVOCATION, IF ANY; THE DEFENDANT'S MENTAL AND PHYSICAL STATE; AND THE CIRCUMSTANCES AND RELATIONSHIPS BETWEEN THE PARTIES.

DEFENDANT'S GOOD CHARACTER AND/OR REPUTATION

THE DEFENDANT HAS PRESENTED EVIDENCE OF HIS GOOD REPUTATION AND CHARACTER TO SHOW THAT IT WOULD BE INCONSISTENT WITH THE DEFENDANT COMMITTING THE CRIME. THE WEIGHT YOU GIVE TO THAT TESTIMONY, LIKE ALL OTHER TESTIMONY IN THE CASE, IS FOR YOU TO DECIDE IN YOUR GOOD JUDGMENT. YOU MAY CONSIDER TESTIMONY OF THE DEFENDANT'S GOOD CHARACTER ALONG WITH ALL THE OTHER EVIDENCE IN DECIDING WHETHER OR NOT THE DEFENDANT IS GUILTY OR NOT GUILTY.

ARREST BY POLICE OFFICER

A POLICE OFFICER MAY USE REASONABLE FORCE IN CARRYING OUT A LAWFUL ARREST. WHETHER THE FORCE USED WAS REASONABLE DEPENDS ON THE FACTS OF THE CASE AND IS A QUESTION FOR YOU TO DECIDE. YOU MUST LOOK AT THE CIRCUMSTANCES THAT APPEARED TO THE OFFICER AT THE TIME THAT THE DEADLY FORCE WAS USED AND DECIDE WHETHER AN ORDINARY AND REASONABLE PERSON, ACTING WITH THE SAME KNOWLEDGE AND IN THE SAME SITUATION AS THE OFFICER, WOULD HAVE BELIEVED THAT THE FORCE USED WAS NECESSARY. IF YOU FIND THAT THE DEGREE OF FORCE USED BY THE DEFENDANT WAS REASONABLE YOU MUST FIND THE DEFENDANT NOT GUILTY.

SELF-DEFENSE

THE DEFENDANT HAS RAISED THE DEFENSE OF SELF-DEFENSE. SELF-DEFENSE IS A COMPLETE DEFENSE AND, IF IT IS ESTABLISHED, YOU MUST FIND THE DEFENDANT NOT GUILTY. THE STATE HAS THE BURDEN OF DISPROVING SELF-DEFENSE BY PROOF BEYOND A REASONABLE DOUBT. IF YOU HAVE A REASONABLE DOUBT OF THE DEFENDANT'S GUILT AFTER CONSIDERING ALL THE EVIDENCE, INCLUDING THE EVIDENCE OF SELF-DEFENSE, THEN YOU MUST FIND THE DEFENDANT NOT GUILTY. ON THE OTHER HAND, IF YOU HAVE NO REASONABLE DOUBT OF THE DEFENDANT'S GUILT AFTER CONSIDERING ALL THE EVIDENCE, INCLUDING THE EVIDENCE OF SELF-DEFENSE, THEN YOU MUST FIND THE DEFENDANT GUILTY.

THE FOLLOWING ELEMENTS ARE REQUIRED TO ESTABLISH SELF-DEFENSE.

(1) WITHOUT FAULT

FIRST, THE DEFENDANT MUST BE WITHOUT FAULT IN BRINGING ON THE DIFFICULTY. IF THE DEFENDANT'S CONDUCT WAS THE TYPE WHICH WAS REASONABLY CALCULATED TO, AND DID, PROVOKE A DEADLY ASSAULT, THE DEFENDANT WOULD BE AT FAULT IN BRINGING ON THE DIFFICULTY AND WOULD NOT BE ENTITLED TO AN ACQUITTAL BASED ON SELF-DEFENSE.

2) IMMINENT DANGER

THE SECOND ELEMENT OF SELF-DEFENSE IS THAT THE DEFENDANT WAS ACTUALLY IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY OR

THAT THE DEFENDANT ACTUALLY BELIEVED HE WAS IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY.

IF THE DEFENDANT WAS ACTUALLY IN IMMINENT DANGER, IT MUST BE SHOWN THAT THE CIRCUMSTANCES WOULD HAVE WARRANTED A PERSON OF ORDINARY FIRMNESS AND COURAGE TO STRIKE THE FATAL BLOW TO PREVENT DEATH OR SERIOUS BODILY INJURY. IF THE DEFENDANT BELIEVED HE WAS IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY, IT MUST BE SHOWN THAT A REASONABLY PRUDENT PERSON OF ORDINARY FIRMNESS AND COURAGE WOULD HAVE HAD THE SAME BELIEF.

IN DECIDING WHETHER THE DEFENDANT ACTUALLY WAS, OR BELIEVED HE WAS, IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY, YOU SHOULD CONSIDER ALL THE FACTS AND CIRCUMSTANCES SURROUNDING THE CRIME, INCLUDING THE PHYSICAL CONDITION AND CHARACTERISTICS OF THE DEFENDANT AND THE VICTIM.

RIGHT TO ACT ON APPEARANCES

THE DEFENDANT DOES NOT HAVE TO SHOW THAT HE WAS ACTUALLY IN DANGER. IT IS ENOUGH IF THE DEFENDANT BELIEVED HE WAS IN IMMINENT DANGER AND A REASONABLY PRUDENT PERSON OF ORDINARY FIRMNESS AND COURAGE WOULD HAVE HAD THE SAME BELIEF. THE DEFENDANT HAS THE RIGHT TO ACT ON APPEARANCES EVEN THOUGH THE DEFENDANT'S BELIEFS MAY HAVE BEEN MISTAKEN. IT IS FOR YOU TO DECIDE WHETHER THE DEFENDANT'S FEAR OF IMMEDIATE DANGER OF DEATH OR SERIOUS BODILY

INJURY WAS REASONABLE AND WOULD HAVE BEEN FELT BY AN ORDINARY PERSON IN THE SAME SITUATION.

WORDS ACCOMPANIED BY HOSTILE ACTS

WORDS ACCOMPANIED BY HOSTILE ACTS MAY, DEPENDING ON THE CIRCUMSTANCES, ESTABLISH SELF-DEFENSE.

(3) NO OTHER WAY TO AVOID DANGER

THE FINAL ELEMENT OF SELF-DEFENSE IS THAT THE DEFENDANT HAD NO OTHER PROBABLE WAY TO AVOID THE DANGER OF DEATH OR SERIOUS BODILY INJURY THAN TO ACT AS THE DEFENDANT DID IN THIS PARTICULAR INSTANCE.

DEGREE OF FORCE

A PERSON CANNOT BE REQUIRED TO MAKE AN EXACT CALCULATION AS TO THE DEGREE OR AMOUNT OF FORCE WHICH MAY BE NEEDED TO AVOID DEATH OR SERIOUS BODILY HARM. THEREFORE, IN SELF-DEFENSE, THE DEFENDANT HAS THE RIGHT TO USE THE FORCE NEEDED TO AVOID DEATH OR SERIOUS BODILY HARM. THE FORCE USED IN SELF-DEFENSE DOES NOT HAVE TO BE LIMITED TO THE DEGREE OR AMOUNT OF FORCE USED BY THE VICTIM. THE DEFENDANT HAS THE RIGHT TO USE SO MUCH FORCE AS APPEARED TO BE NECESSARY FOR COMPLETE SELF-PROTECTION, AND WHICH A PERSON OF ORDINARY REASON AND FIRMNESS WOULD HAVE BELIEVED TO BE NEEDED TO PREVENT DEATH OR SERIOUS BODILY HARM.

CONTINUING UNTIL THREAT OF HARM IS ENDED

IF THE DEFENDANT IS JUSTIFIED IN DEFENDING HIMSELF AND IN FIRING THE FIRST SHOT, THEN THE DEFENDANT IS ALSO JUSTIFIED IN CONTINUING TO

SHOOT UNTIL IT IS APPARENT THAT THE DANGER OF DEATH OR SERIOUS BODILY INJURY HAS COMPLETELY ENDED.

CAUTIONARY INSTRUCTION

MISTER FOREMAN AND MEMBERS OF THE JURY, I AM REQUIRED TO CHARGE YOU THE LAW AS I HAVE DONE THROUGH THESE INSTRUCTIONS NOW BEING GIVEN TO HELP GUIDE YOU TO A JUST AND LAWFUL VERDICT. WHETHER SOME OF THESE INSTRUCTIONS WILL APPLY WILL DEPEND UPON WHAT YOU FIND TO BE THE FACTS. THE FACT THAT I HAVE INSTRUCTED YOU ON VARIOUS SUBJECTS ON THIS CASE, MUST NOT BE TAKEN AS INDICATING AN OPINION OF THIS COURT AS TO WHAT YOU SHOULD FIND TO BE THE FACTS OR WHAT YOUR VERDICT SHOULD BE.

CONCLUSION

NOW, YOU HAVE BEEN CHOSEN AND SWORN TO GIVE THE PARTIES IN THIS CASE A FAIR AND IMPARTIAL TRIAL. WHEN YOU HAVE DONE SO, YOU WILL HAVE COMPLIED WITH YOUR OATH AND NO ONE WILL HAVE A RIGHT TO CRITICIZE YOUR VERDICT. YOU MUST NOT BE INFLUENCED BY OPINIONS OR EXPRESSIONS OF OPINION YOU MAY HAVE HEARD OUTSIDE OF THE COURTROOM BUT RATHER SHOULD BASE YOUR VERDICT SOLELY ON THE TESTIMONY OF THE SWORN WITNESSES WHO TOOK THE STAND, THE EXHIBITS RECEIVED INTO EVIDENCE, AND THE LAW WHICH I HAVE STATED. YOU SHOULD NOT BE SWAYED BY CAPRICE, PASSION, PREJUDICE, OR IMPROPER SYMPATHY FOR OR AGAINST ANYONE IN THIS CASE. REMEMBER, YOU HAVE NO FRIENDS TO REWARD OR ENEMIES TO PUNISH AND ALL PARTIES ARE ENTITLED TO A FAIR AND IMPARTIAL TRIAL.

IT IS YOUR DUTY AS JURORS TO CONSULT WITH ONE ANOTHER AND TO DELIBERATE IN AN EFFORT TO REACH AN AGREEMENT. EACH OF YOU MUST DECIDE THIS CASE FOR YOURSELF BUT ONLY AFTER IMPARTIAL CONSIDERATION OF ALL THE EVIDENCE WITH YOUR FELLOW JURORS. IN THE COURSE OF YOUR DELIBERATIONS, DO NOT HESITATE TO RE-EXAMINE YOUR OWN VIEWS AND CHANGE YOUR OPINION IF YOU BECOME CONVINCED IT IS ERRONEOUS. HOWEVER, DO NOT SURRENDER YOUR HONEST CONVICTION AS TO THE WEIGHT OR EFFECT OF THE EVIDENCE SOLELY BECAUSE OF THE OPINION OF YOUR FELLOW JURORS OR FOR THE MERE PURPOSE OF RETURNING A VERDICT. AS I STATED EARLIER, YOU ARE JUDGES - JUDGES OF THE FACTS. YOUR VERDICT

MUST REPRESENT THE CONSIDERED JUDGMENT OF EACH JUROR. IN OTHER WORDS, YOUR VERDICT MUST BE UNANIMOUS.

NOW YOU MAY HAVE NOTICED THAT I HAVE READ THESE INSTRUCTIONS. I DO SO TO GIVE YOU THE LAW AS ACCURATELY AS POSSIBLE. I WILL GIVE YOU A COPY OF THESE INSTRUCTIONS TO HAVE IN THE JURY ROOM. YOU MAY REFER TO THESE INSTRUCTIONS TO ASSIST YOU IN YOUR DELIBERATIONS. YOU MUST CONSIDER THE INSTRUCTIONS AS A WHOLE AND MAY NOT FOLLOW SOME AND IGNORE OTHERS.

MISTER FOREMAN, IT WILL BE YOUR DUTY TO PRESIDE OVER THE DELIBERATIONS OF THE JURY. IF, DURING YOUR DELIBERATIONS, YOU SHOULD DESIRE TO COMMUNICATE WITH THE COURT, PLEASE REDUCE YOUR MESSAGE OR QUESTION TO WRITING SIGNED BY YOUR FOREPERSON AND PASS THE NOTE TO THE BAILIFF WHO WILL BRING IT TO MY ATTENTION. I WILL THEN RESPOND AS PROMPTLY AS POSSIBLE, EITHER IN WRITING OR BY HAVING YOU RETURN TO THE COURTROOM.

NOW, YOU HAVE HEARD THE EVIDENCE AND YOU HAVE HEARD THE LAW. WHATEVER YOUR VERDICT, MISTER FOREMAN, YOU WILL INDICATE IT ON THE VERDICT FORM AND THEN SIGN AND DATE YOUR VERDICT.

REMEMBER THAT ALTHOUGH THE FOREPERSON IS THE ONLY JUROR WHO WRITES THE VERDICT, IT IS NOT HIS ALONE. THE VERDICT HAS TO BE UNANIMOUS. MISTER FOREMAN, YOU ARE NOT AUTHORIZED TO WRITE THE VERDICT UNTIL ALL OF YOU HAVE AGREED ON THE VERDICT.