

**IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR MULTNOMAH COUNTY**

State of Oregon,	)	
Plaintiff	)	
	)	Case No. 0801-30193
vs.	)	
	)	PRECAUTIONARY INSTRUCTIONS
Ralph Williams,	)	
Defendant	)	

Members of the jury, the law that applies to this case will be given to you in part in these precautionary instructions. After you have heard the evidence I will give you additional and more detailed instructions regarding the legal rules you must follow in deciding this case.

**WRITTEN INSTRUCTIONS**

I have provided these instructions for you to take with you to the jury room, but when you use these written instructions, or the ones I will give you at the end of the trial, you must not place undue emphasis on any particular instruction, word or phrase. You must view the instructions as a whole.

**FUNCTIONS OF THE JUDGE AND JURY**

Your duty is to decide the facts from the evidence. You, and you alone, are the judges of the facts. You will hear the evidence, decide the facts, and then apply those facts to the law I will give you. That is how

you will reach your verdict. In doing so you must follow the law whether you agree with it or not.

## **EVIDENCE**

You will hear the term “evidence” during the course of this trial. I want to discuss with you what is meant by evidence and how you should consider it.

There are two types of evidence – direct and circumstantial. Direct evidence is the testimony of an eyewitness or an object actually involved in the case. Circumstantial evidence is a chain of circumstances pointing to the existence or non-existence of a certain fact. It is just another way of describing inferences. For example, if a witness testifies that she saw a jet fly across the sky, that is *direct* evidence that a jet flew across the sky. On the other hand, if a witness testifies that he saw a vapor trail move across the sky, that is *circumstantial* evidence that a jet flew across the sky.

You may base your verdict on direct evidence, or on circumstantial evidence, or on both.

### *Forms of Evidence*

The evidence from which you must decide the facts comes in one of three forms.

- (1) The sworn testimony of witnesses, both on direct- and cross-examination, and regardless of who calls the witness.
- (2) Exhibits that the court receives and which you will have with you in the jury room. Exhibits are physical things such as letters, photographs, charts, or physical objects. You will be able to examine the exhibits while you deliberate.
- (3) Any facts to which the lawyers have agreed or stipulated.

## *Witnesses*

Generally the testimony of any witness whom you believe is enough to prove any fact in dispute. You are not to simply count the witnesses, but you are to weigh the evidence.

Every witness will take an oath to tell the truth and is assumed to speak truthfully. However, this assumption may be overcome by:

- (1) The manner in which the witness testifies.
- (2) The nature or quality of the witness's testimony.
- (3) Contradictory evidence that you find to be more probably true.
- (4) Evidence concerning the bias, motives, or interest of the witness.

## *Hypothetical Questions*

Hypothetical questions may be asked. These are questions in which the witness is asked to assume that certain facts are true, then to give an opinion based on those assumed facts. Sometimes witnesses may give opinions and tell you they are assuming certain facts even though the question wasn't precisely in the form of a hypothetical. In either situation, if you conclude that the facts the witness assumed are *not* true, then you must disregard the witness's opinion.

## *Duty to Weigh Evidence*

In deciding this case, it is your duty to consider and weigh all the evidence that you find worthy of belief calmly and without emotion. To be an effective juror, you must not be influenced in any degree by personal feelings or sympathy for or prejudice against any party, lawyer, witness or other participant in this case. You may draw inferences from the evidence, provided that your inferences and conclusions are reasonable and are

based on your common sense and experience. Do not decide this case on guesswork, conjecture, or speculation.

You must not interpret any statement, ruling, or remark I make during this trial as any indication that I have formed any opinion about the facts or outcome of this case. You, and you alone, are to decide the facts. You must decide how believable the evidence is and what weight or value you will give that evidence.

When a witness testifies about statements made by the defendant, you should consider such testimony with caution.

In reviewing such testimony, you should consider, among other things, the following:

- (1) Did the defendant make the statement, and, if so, did the defendant clearly express what he intended to say?
- (2) Did the witness correctly hear and understand what the defendant said?
- (3) Did the witness correctly remember and relate here in court what the defendant said?
- (4) Did the witness intentionally or mistakenly alter some of the words used by the defendant, thereby changing the meaning of what was actually said?

If, after weighing such factors, you conclude that the defendant said what he intended to say and that the witness to the statement correctly understood, remembered, and related to you what the defendant said, then you are authorized to consider such statements for what you deem them to be worth.

*What is **Not** Evidence*

Certain things are not evidence and are to be disregarded by you in deciding the facts:

The opening statements and closing arguments of the attorneys are not part of the evidence. These statements and arguments are merely intended to help you understand the evidence.

The questions asked of the witnesses are not evidence. They can be considered only to give meaning to the witnesses' answers.

Objections to questions are not evidence. Attorneys may make objections to evidence during the trial. I will decide whether or not it is proper for you to consider such evidence under the law. You should not be influenced by the objection or by my ruling. If I sustain an objection, the witness is not permitted to answer the question, or the exhibit cannot be received. Whenever I sustain an objection to a question, ignore the question and do not guess what the answer might have been. If the objection is overruled, treat the answer like any other answer.

Testimony that has been excluded, stricken, or that you have been instructed to disregard is not evidence and must be disregarded. If you write something down and I tell you that it is stricken or that you must disregard it, I expect you to literally erase it or mark it out of your notes so that you don't accidentally rely on it when you are deciding the case.

In addition, if some testimony has been received only for a limited purpose, you must follow the limitation I give you.

Anything that you may have seen or heard outside the courtroom is not evidence. You are to decide the case solely on the evidence offered and received in the trial.

The fact that a criminal charge has been filed against the defendant is not evidence. As I told you, the defendant is innocent of any crime unless and until the state proves his guilt beyond a reasonable doubt.

## **THE CHARGES AND DEFINITIONS**

As I described to you earlier, Mr. Williams is charged in this case with Robbery in the Third Degree (Count 1), Assault in the Fourth Degree (Count 2) and Theft in Third Degree (Count 3).

At the end of the trial, I will give you detailed instructions as all of the elements the State must prove as to each individual count. At this stage of the trial I am giving you only an overview to provide a framework for the evidence you are about to hear.

### **ROBBERY IN THE THIRD DEGREE**

Oregon law provides that a person commits the crime of Robbery in the Third Degree if, in the course of committing theft, the person uses physical force on another person with the intent of preventing or overcoming resistance to his taking the property or retaining it immediately after taking it.

### **ASSAULT IN THE FOURTH DEGREE**

Oregon law provides that a person commits the crime of assault in the fourth degree if the person recklessly causes physical injury to another.

### **THEFT IN THE THIRD DEGREE**

Oregon law provides that a person commits the crime of theft in the third degree by taking when, with intent to deprive another of property, the person takes property from its owner.

### **DEFINITIONS**

The term "physical injury" means an injury that impairs a person's physical condition or causes substantial pain.

## **Mental States**

Each of the crimes with which Mr. Williams is charged requires proof of a mental state, as well as proof of the charged acts.

In the Robbery charge (count 1) the State must prove beyond a reasonable doubt that Mr. Williams had a conscious objective (intent) to overcome resistance to his taking of property or keeping it after taking it and that he acted with an awareness (knowingly) that he was using or threatening the immediate use of physical force.

In the Assault charge (count 2) the State must prove beyond a reasonable doubt that Mr. Williams was aware of and consciously disregarded a substantial and unjustifiable risk that Ms. Crowder would suffer physical injury. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation. Recklessness is also established if a person acts intentionally or knowingly.

In the Theft charge, the State must prove beyond a reasonable doubt that Mr. Williams acted with an awareness (knowing) that he was taking the personal property of Ms. Scott.

## **FURTHER INSTRUCTIONS**

### *Note Taking*

You may take notes, if you wish, during the trial. However, please keep in mind that each party is entitled to the considered decision of each juror. Therefore, during deliberation, you should not give undue weight to another juror's notes if those notes conflict with your recollection of the evidence. Do not allow your note taking to interfere with your ability to observe and evaluate testimony. Don't feel obligated to take notes just because we have notepads. For some people it helps them to listen and remember, but for others it gets in the way and they remember better if

they don't try to take notes. Do whatever works for you. Whenever you leave the courtroom, your notes should be left on your chair in the jury box or in the jury room. They must not leave the courthouse and they are not to be read by your fellow jurors – they are for your own use.

### *Discussions During Trial*

Do not discuss this case during the trial with anyone, including any of the attorneys, parties, witnesses, your friends, or members of your family. Do not discuss this case with other jurors until you begin your deliberations at the end of the case. Do not attempt to decide the case until you begin your deliberations.

I will give you some form of this instruction every time we take a break. I do that not to insult you or because I don't think you are paying attention, but because, in my experience, this is the hardest instruction for jurors to follow. I know of no other situation in our culture where we ask strangers to sit together watching and listening to something, then go into a little room together and not talk about the one thing they have in common – what they just watched together.

There are at least two reasons for this rule. The first is to help you keep an open mind. When you talk about things, you start to make decisions about them and it is extremely important that you not make any decisions about this case until you have heard all the evidence and all the rules for making your decisions, and you won't have that until the very end of the trial. The second reason for the rule is that we want all of you working together on this decision when you deliberate. If you have conversations in groups of two or three during the trial, you won't remember to repeat all of your thoughts and observations for the rest of your fellow jurors when you deliberate at the end of the trial.

Ignore any attempted improper communication. If any person tries to talk to you about this case, tell that person that you cannot discuss the case because you are a juror. If that person persists, simply walk away and report the incident to my staff.

**Do not** make any independent personal investigations into any facts or locations connected with this case. **Do not** look up any information from any source, including the Internet. **Do not** communicate any private or special knowledge about any of the facts of this case to your fellow jurors. **Do not** read any news stories or listen to any radio or television reports about this case or about anyone involved in this case. It can be very tempting for jurors to do their own research to make sure they are making the correct decision, but you must resist that temptation for our system of justice to work as it should. I specifically instruct that you must decide the case only on the evidence received here in court.

We will now hear the opening statements in which the lawyers will outline the evidence as they expect it to be. After the opening statements, the evidence will be presented. At the conclusion of the evidence, the lawyers will make their closing arguments to you. I will then instruct you about the rest of the law that applies to this case, and you will begin your deliberations.

At the end of the trial, you will have to make your decision based on what you recall of the evidence. I urge you to pay close attention to the testimony as it is given.