

204.05 BIFURCATED PROCEEDINGS - MODEL JURY INSTRUCTION.

NOTE WELL: This is an illustration of the recommended manner to construct a charge for a bifurcated proceeding if such a proceeding is necessary, e.g., where aggravating factors are at issue.

MODEL JURY INSTRUCTION

Members of the jury: Having found the defendant guilty of (*name offense*), you must now consider (*insert matter for consideration, e.g., whether any aggravating factors exist*). All of the evidence has been presented. It is now your duty to decide from this evidence what the facts are. You must then apply the law that I am about to give you to those facts. It is absolutely necessary that you understand and apply the law as I give it to you, and not as you think it is, or as you might like it to be. This is important because justice requires that everyone tried for the same crime be treated in the same way, and have the same law applied to *him*. (N.C.P.I.-Crim. 101.05.)

The defendant has denied the existence of the(se) aggravating factor(s). The fact that the state has alleged that such factor(s) exist(s) is no evidence that the factor(s) do(es) in fact exist. Under our system of justice, when a defendant denies the existence of an aggravating factor, *he* is not required to prove that the aggravating factor does not exist. It is presumed that the aggravating factor does not exist. The State must prove to you beyond a reasonable doubt that the aggravating factor exists.

A reasonable doubt is a doubt based on reason and common sense, arising out of some or all of the evidence that has been presented, or lack

or insufficiency of the evidence, as the case may be. Proof beyond a reasonable doubt is proof that fully satisfies or entirely convinces you of the existence of the aggravating factor. (N.C.P.I.-Crim. 101.10.)

You are the sole judges of the credibility of each witness. You must decide for yourselves whether to believe the testimony of any witness. You may believe all, or any part, or none of what a witness has said on the stand.

In determining whether to believe any witness, you should apply the same tests of truthfulness that you apply in your everyday affairs. As applied to this trial, these tests may include: the opportunity of the witness to see, hear, know or remember the facts or occurrences about which *he* testified; the manner and appearance of the witness; any interest, bias, or prejudice the witness may have; the apparent understanding and fairness of the witness, whether *his* testimony is reasonable; and whether *his* testimony is consistent with other believable evidence in the case. (N.C.P.I.-Crim. 101.15.)

You are the sole judges of the weight to be given any evidence. By this I mean, if you decide that certain evidence is believable you must then determine the importance of that evidence in light of all other believable evidence in the case. (N.C.P.I.-Crim. 101.20.)

Having found the defendant guilty of (*name offense*), you must now consider the following question: Do you find from the evidence beyond a reasonable doubt the existence of the following aggravating factor(s)? (*Insert text of appropriate N.C.P.I.-Crim., e.g., N.C.P.I.-Crim. 204.25, the aggravating factor instruction, which is quoted in the preceding sentence.*)

Now members of the jury, you have heard the evidence and the arguments of counsel for the State and for the defendant. It is your duty to remember all the evidence and if your recollection of the evidence differs from that of the District Attorney, or of the defense attorney, you are to rely solely upon your recollection of the evidence in your deliberations. I have not reviewed the contentions of the State or of the defendant, but it is your duty not only to consider all the evidence, but also to consider all the arguments, the contentions and positions urged by the State's attorney and the defendant's attorney in their speeches to you, and any other contention that arises from the evidence, and to weigh them in the light of your common sense, and as best as you can, to determine the truth of this matter.

The law, as indeed it should, requires the presiding judge to be impartial. You are not to draw any inference from any ruling that I have made, or any inflection in my voice or expression on my face, or any question I have asked a witness or anything else that I may have said or done during this trial, that I have an opinion or have intimated an opinion, as to whether any part of the evidence should be believed or disbelieved, as to whether any fact has or has not been proved, or as to what your findings ought to be. It is your exclusive province to find the true facts of the case and to render a verdict reflecting the truth as you find it.

I instruct you that a verdict is not a verdict until all twelve jurors agree unanimously as to what your decision shall be. You may not render a verdict by majority vote.

When you have reached a unanimous verdict, have your foreman mark the appropriate place on the verdict form, which I will send in to you in a few moments after you enter the jury room.

NOTE WELL: EXCUSE THE ALTERNATE JUROR.

As you retire to the jury room you should first select one of your members to serve as your foreman to lead in your deliberations. Do not begin your deliberations on your verdict until you receive the written verdict form from the bailiff. Proceed immediately with the selection of your foreman and then after receiving the written verdict form proceed with your verdict deliberations; and when you have reached a unanimous verdict and are ready to pronounce it, and your foreman has marked the verdict on the form, have your foreman sign and date the verdict form, notify the bailiff by knocking on the door to the jury room, or summoning the bailiff; and you will be returned to the courtroom to pronounce your verdict.

You may retire and select your foreman.

NOTE WELL: After the jury retires the Judge must address the attorneys as follows:

Before sending the verdict form to the jury and allowing them to begin their deliberations I will now consider any requests for corrections to the charge to the jury, or any additional matters that anyone feels are necessary or appropriate to submit a proper and accurate charge to the jury.

Are there any specific requests for corrections or additions to the charge?

NOTE WELL: Consider all specific requests and if appropriate bring the jury back and correct or add to the charge. If request(s) for corrections or additions are rejected, attorneys must be allowed to make specific objections on the record.

After all specific requests that have been submitted and rejected and the proper record notation(s) made,

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give the verdict form(s) to the bailiff and ask him to hand [it] [them] to the jury without comment.

If it is necessary to return the jury to the courtroom for corrections or additions to the charge the Judge should address the jury as follows:

Members of the jury, after you left the courtroom it was brought to my attention that some further instructions are necessary to [correct] [add to] the previous instructions I gave you.

I charge you that

You may retire and begin your deliberations as soon as you receive the written verdict form(s).

NOTE WELL: Repeat the question to the lawyers regarding corrections or additions to the charge. If there are further specific requests repeat the same procedure as before; if not, hand the verdict form(s) to the bailiff to give to the jury. (N.C.P.I.-Crim. 101.35.)