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MAR 05 2020  
DONNA McQUALITY, Clerk  
By: I WILLIAMS

March 5, 2020  
*State of Arizona v. Anthony James Richards*  
Cause No. P1300CR201600476

**PRELIMINARY JURY INSTRUCTIONS**

**Duty of Jurors:**

Ladies and Gentlemen, now that you have been sworn, I will briefly tell you something about your duties as jurors and give you some instructions. At the end of the trial I will give you more detailed instructions, and those instructions will control your deliberations.

It will be your duty to decide the facts. You must decide the facts only from the evidence produced in court. You must not speculate or guess about any fact. You must not be influenced by sympathy or prejudice. You must not take anything I may say or do during the trial as indicating any opinion about the facts. You and you alone, are the judges of what happened. You will hear the evidence, decide the facts, and then apply the law I will give to you to those facts. That is how you will reach your verdict.

**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. However, 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 bailiff will guard them. No one will be allowed to read your notes. After you have rendered your verdict, the bailiff will collect your notes and destroy them.

Do not be influenced at all by my taking notes. What I write down may have nothing to do with what you will be concerned with at this trial.

## **Questions by Jurors:**

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 a question about the case for a witness or for me, write it down, but do not sign it. Hand the question to the bailiff. If your question is for a witness who is about to leave the witness stand, please signal the bailiff or me before the witness leaves the stand. At the end of each witness' testimony I will also ask if the jurors have any questions. The lawyers and I will then discuss any question(s).

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.

## **Admonition:**

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

You are to determine the facts of this case only from the evidence that is presented in this courtroom. The law that you are to apply is the law that I give you in the final instructions. 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. 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. This prohibits you from consulting any outside source.

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. Do not read anything about the case either in the newspaper or on the internet.

To avoid even the appearance of improper conduct, do not talk to any of the parties, the lawyers, witnesses or media representatives about anything until the case is over, even if your conversation with them has nothing to do with the case. For example, you might pass an attorney in the hall, and ask what good restaurants there are downtown, and 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 you 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.

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

In a criminal case such as this, 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 therefore may not discuss the evidence among yourselves until you retire to deliberate on your verdict. Do not form final opinions about any fact or about the outcome of the case until you have heard and considered all 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.

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.

## **Alternate Jurors:**

The law provides for a jury of twelve (12) persons in a case such as this. We have more 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, alternate jurors will be determined by lot in a drawing held in open court. Please do not be concerned with who may or may not be chosen as an alternate at the end of the case.

## **Scheduling During Trial:**

The trial is expected to last no more than eleven (11) days. Trial will be conducted Wednesday, March 4, 2020; Thursday, March 5, 2020; Friday, March 6, 2020; next Wednesday, March 11, 2020; Thursday, March 12, 2020; Friday, March 13, 2020; the following Tuesday, March 17, 2020; Wednesday, March 18, 2020; Thursday, March 19, 2020; Friday, March 20, 2020 and conclude no later than Wednesday, March 25, 2020. Generally, trial is conducted from 9:00 a.m. to 4:30 p.m. We will take short recesses every mid-morning and mid-afternoon. We will recess at noon for lunch and begin again at 1:30. Unless a different starting time is announced prior to recessing for the evening, you may assume a starting time of 9:00 a.m. for the next day.

At the beginning of the day, please assemble in the jury room for this division. Please do not come into the courtroom until you are called by the bailiff.

## **Order of Trial:**

Criminal trials generally proceed in the following order:

First, the prosecuting attorney will make an opening statement giving a preview of the case. The defendant's attorney may make an opening statement outlining the defense case immediately after the prosecutor's statement, or it may be postponed until after the State's case has been presented. The purpose of an opening statement is to help you prepare for anticipated evidence.

Second, the State will present its evidence. After the State finishes the presentation of its evidence, the defendant may present evidence. If the defendant does produce evidence, the State may present additional, or rebuttal, evidence. With each witness, there is a direct examination, a cross-examination by the opposing side, and, finally, redirect examination. This usually ends the testimony of each witness.

Third, after all the evidence is in, I will read and give you copies of the final instructions, the rules of law you must follow in reaching your verdict.

Fourth, the attorneys will make closing arguments to tell you what they think the evidence shows and how they think you should decide the case. The State has the right to open and close the argument since the State has the burden of proof.

Fifth, you will deliberate in the jury room about the evidence and rules of law in an effort to reach the verdicts. If you unanimously agree upon the verdicts, they will be read in court with you and the parties present.

### **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.

### **Evidence, Statements of Lawyers and Rulings:**

As I stated earlier, it is your duty to decide the facts. The following are additional rules that will help you determine what are and what are not facts:

1. Evidence to be considered: You must determine the facts only from the testimony of witnesses and from exhibits admitted in evidence. Anything you may see or hear when the court is not in session, even if what you see or hear is done or said by one of the parties or by one of the witnesses, is not evidence and must not be considered by you.
2. Lawyers' statements and questions: Statements or arguments made by the lawyers in the case are not evidence. Their purpose is to help you understand the evidence and law. A question is not evidence. A question can only be used to give meaning to a witness' answer.

3. Objections to questions: 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 a lawyer objects to a question and I do not allow the witness to answer, you must not try to guess what the answer might have been. You must also not try to guess the reason why the lawyer objected in the first place.
4. Rejected and stricken evidence: At times during the trial, evidence may be offered that I do not admit as evidence. At times I may order some evidence to be stricken from the record. You must not consider rejected or stricken evidence for any purpose.
5. Stipulations: During the trial, the lawyers are permitted to stipulate that certain evidence exists. This means both sides agree that evidence exists and is to be considered by you during your deliberations at the conclusion of the trial.

### **Direct and Circumstantial Evidence:**

Evidence may be direct or circumstantial. Direct evidence is a physical exhibit or the testimony of a witness, who saw, heard, touched, smelled or otherwise actually perceived an event. Circumstantial evidence is the proof of a fact or facts from which the existence of another fact may be determined. The law makes no distinction between direct and circumstantial evidence. You must determine the weight to be given to all the evidence without regard to whether it is direct or circumstantial.

### **Credibility of Witnesses:**

In deciding the facts of this case, you should consider what testimony to accept, and what to reject. You may accept everything a witness says, or part of it, or none of it.

In evaluating testimony, you should use the tests for accuracy and truthfulness that people use in determining matters of importance in everyday life, including such factors as: the witness' ability to see or hear or know the things the witness testified to; the quality of the witness' memory; the witness' manner while testifying; whether the witness has any motive, bias, or prejudice; whether the witness is contradicted by anything the witness said or wrote before trial, or by other evidence; and the reasonableness of the witness' testimony when considered in light of other evidence. Consider all the evidence in light of reason, common sense, and experience.

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

**Constitutional Right to Not Testify:**

A defendant in a criminal case has a constitutional right to not testify at trial, and the exercise of that right cannot be considered by the jury in determining whether a defendant is guilty or not guilty.

**Statements of Defendant:**

If there is testimony in this case about what a defendant said to a law enforcement officer, you must not consider any such statements unless you determine beyond a reasonable doubt that the defendant made the statements voluntarily.

A defendant's statement to a law enforcement officer was not voluntary if it resulted from the defendant's will being overcome by a law enforcement officer's use of any sort of violence, coercion, or threats or by any direct or implied promise, however slight. You must give such weight to the defendant's statement as you feel it deserves under all the circumstances.

**Presumption of Innocence and Burden of Proof:**

The State has charged the defendant with one count of First Degree Murder, one count of Trafficking in Stolen Property, one count of Theft of a Credit Card, one count of Forgery and nineteen counts of Taking the Identity of Another. These charges are not evidence against the defendant. You must not think the defendant is guilty just because the defendant has been charged with a crime. The defendant has pled "not guilty." The defendant's plea of "not guilty" means that the State must prove every part of each charge beyond a reasonable doubt. The law does not require a defendant to prove innocence. Every defendant is presumed by law to be innocent. The State has the burden of proving the defendant guilty beyond a reasonable doubt.

In civil cases, it is only necessary to prove that a fact is more likely true than not or that its truth is highly probable. In criminal cases such as this, the State's proof must be more powerful than that. It must be beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. 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 doubt.

If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime(s) charged; you must find the defendant guilty. If, on the other hand, you think there is a real possibility that the defendant is not guilty, you must give the defendant the benefit of the doubt and find the defendant not guilty.

In deciding whether the defendant is guilty or not guilty, do not consider the possible punishment.

### **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. 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 law allows each side to have an investigator present with them throughout the entire trial.

### **Definitions:**

**“Control”** or **“exercise control”** means to act so as to exclude others from using their property except on the defendant’s own terms.

**“Falsely makes a written instrument”** means to make or draw a complete or incomplete written instrument that purports to be an authentic creation of its ostensible maker but that is not either because the ostensible maker is fictitious, or because, if real, the ostensible maker did not authorize the making or drawing of the written instrument.

**“Intent to Defraud”** is an intent to mislead another person for the purpose of gaining some material benefit or for the purpose of inducing any person to part with property or to change position.



**“Intentionally” or “with intent to”** as used in these instructions means that a defendant's objective is to cause that result or to engage in that conduct.

**“Knowingly”** means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or believes that his or her conduct is of that nature or that the circumstance exists. It does not require any knowledge of the unlawfulness of the act or omission.

**“Personal identifying information”** means any written document or electronic data that does or purports to provide information concerning a name, signature, electronic identifier or screen name, electronic mail signature, address or account, biometric identifier, driver or professional license number, access device, residence or mailing address, telephone number, employer, student or military identification number, social security number, tax identification number, employment information, citizenship status or alien identification number, personal identification number, photograph, birth date, savings, checking or other financial account number, credit card, charge card or debit card number, mother’s maiden name, fingerprint or retinal image, the image of an iris or deoxyribonucleic acid or genetic information.

**“Premeditation”** means that the defendant intended to kill another human being or knew he would kill another human being, and that after forming that intent or knowledge, reflected on the decision before killing. It is this reflection, regardless of the length of time in which it occurs, that distinguishes first degree murder from second degree murder. An act is not done with premeditation if it is the instant effect of a sudden quarrel or heat of passion.

The time needed for reflection is not necessarily prolonged, and the space of time between the intent or knowledge to kill and the act of killing may be very short.

**“Property”** means anything of value, tangible or intangible, including trade secrets.

**“Property of another”** means property in which any person other than the defendant has an interest on which the defendant is not privileged to infringe.

**“Stolen property”** means **“property of another”** that has been the subject of any unlawful taking.

**“Recklessly”** means, with respect to a result or to a circumstance described by a statute defining an offense, that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must

be of such nature and degree that disregard of such risk constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

**“Written Instrument”** means any paper, document or other instrument that contains written or printed matter or its equivalent.

### **The Charged Offenses:**

To assist you in considering the evidence that will be presented during the trial, I will now tell you about the crime(s) with which the defendant is charged.

#### **First Degree Murder**

The crime of first-degree murder requires proof of the following:

1. The defendant caused the death of another person; *and*
2. The defendant intended or knew that he would cause the death of another person; *and*
3. The defendant acted with premeditation.

#### **Trafficking in Stolen Property**

The crime of trafficking in stolen property requires proof of the following:

1. The defendant knowingly initiated, organized, planned, financed, directed, managed, or supervised the theft of property of another; *and*
2. The defendant sold, transferred, distributed, dispensed, or disposed of that stolen property to another person.

#### **Forgery**

The crime of forgery requires proof of the following:

1. The defendant falsely made, completed or altered a written instrument; *and*
2. The defendant falsely made, completed or altered the written instrument with the intent to defraud.

## **Taking the Identity of Another**

The crime of unlawful taking of another person's identity requires proof of the following:

1. The defendant knowingly possessed or used any personal identifying information of another person without the consent of that other person; *and*
2. The defendant had the intent to obtain or use the other person's identity for any unlawful purpose or to cause loss to the person, whether or not the other person suffered any economic loss as a result of the offense.

The rules of law I have shared with you in the past minutes are preliminary only. At the end of the case I will read to you and give you a copy of the final instructions of law. In deciding the case you must be guided by the final instructions.