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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

ANTHONY JAMES RICHARDS,

Defendant,

CAUSE NO. P1300CR201600476

**STATE'S REQUESTED JURY
INSTRUCTIONS (AMENDED)**

Assigned to Hon. Debra Phelan

1 Pursuant to Rule 21.2 of the Arizona Rules of Criminal Procedure, the State of
2 Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney and her Deputy
3 undersigned, hereby respectfully submits the attached amended Jury Instructions to conform
4 with the Court's requirement that jury instructions contain the full text of the instruction.
5 These amended instructions are instructions from the R.A.J.I. 5th edition of the Arizona
6 Criminal Jury Instructions.

RESPECTFULLY SUBMITTED this 2nd day of February, 2022.

Sheila Polk
Yavapai County Attorney

By: _____


Ethan A. Wolfinger
Deputy County Attorney

COPY of the foregoing

mailed emailed hand-delivered

this 2nd day of February, 2022 to:

Hon. Debra Phelan
Yavapai County Superior Court Division Pro-Tem A

Tyrone Mitchell
Attorney for Defendant

By: Danielle Beesley

1 **R.A.J.I. (5th Edition 2019) STANDARD CRIMINAL JURY INSTRUCTIONS**

2 **Duty of Jury – RAJI #1**

3 It is your duty as a juror to decide this case by applying these jury instructions to
4 the facts as you determine them. You must follow these jury instructions. They are the rules
5 you should use to decide this case.

6 It is your duty to determine what the facts are in the case by determining what
7 actually happened. Determine the facts only from the evidence produced in court. When I
8 say “evidence,” I mean the testimony of witnesses and the exhibits introduced in court.
9 You should not guess about any fact. You must not be influenced by sympathy or prejudice.
10 You must not be concerned with any opinion that you feel I have about the facts. You, as
11 jurors, are the sole judges of what happened.

12 You must consider all these instructions. Do not pick out one instruction, or part of
13 one, and ignore the others. As you determine the facts, however, you may find that some
14 instructions no longer apply. You must then consider the instructions that do apply,
15 together with the facts as you have determined them.

16 **Indictment is Not Evidence – RAJI #2**

17 The State has charged the defendant with [a crime] [certain crimes]. A charge is not
18 evidence against the defendant. You must not think that the defendant is guilty just because
19 of a charge. The defendant has pled “not guilty.”

20 This plea of “not guilty” means that the State must prove each element of the
21 charge[s] beyond a reasonable doubt.

22 **Presumption of Innocence – RAJI #3**

23 The law does not require a defendant to prove innocence. Every defendant is
24 presumed by law to be innocent. You must start with the presumption that the defendant is
25 innocent.

26 **Burden of Proof – RAJI #4(a)**

27 The State has the burden of proving the defendant guilty beyond a reasonable doubt.
28 This means the State must prove each element of each charge beyond a reasonable doubt.
29 In civil cases, it is only necessary to prove that a fact is more likely true than not or that its
30 truth is highly probable. In criminal cases such as this, the State’s proof must be more
31 powerful than that. It must be beyond a reasonable doubt.

32 Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the
33 defendant’s guilt. There are very few things in this world that we know with absolute
34 certainty, and in criminal cases the law does not require proof that overcomes every doubt.
35 If, based on your consideration of the evidence, you are firmly convinced that the defendant
36 is guilty of the crime charged, you must find [him][her] guilty. If, on the other hand, you

1 think there is a real possibility that [he][she] is not guilty, you must give [him][her] the
2 benefit of the doubt and find [him][her] not guilty.

3 **Jury Not to Consider Penalty – RAJI #5**

4 You must decide whether the defendant is guilty or not guilty by determining what
5 the facts in the case are and applying these jury instructions.

6 You must not consider the possible punishment when deciding on guilt; punishment
7 is left to the judge.

8 **Evidence to Be Considered – RAJI # 8**

9 You are to determine what the facts in the case are from the evidence produced in
10 court. If an objection to a question was sustained, you must disregard the question and you
11 must not guess what the answer to the question might have been. If an exhibit was offered
12 into evidence and an objection to it was sustained, you must not consider that exhibit as
13 evidence. If testimony was ordered stricken from the record, you must not consider that
14 testimony for any purpose.

15 **Lawyers Comments are Not Evidence – RAJI #10**

16 In their opening statements and closing arguments, the lawyers have talked to you
17 about the law and the evidence. What the lawyers said is not evidence, but it may help you
18 to understand the law and the evidence.

19 **Stipulations (if applicable) – RAJI #11**

20 The lawyers are permitted to stipulate that certain facts exist. This means that both
21 sides agree those facts do exist and are part of the evidence. You are to treat a stipulation
22 as any other evidence. You are free to accept it or reject it, in whole or in part, just as any
23 other evidence.

24 **Redacted Exhibits (if applicable) - RAJI #13**

25 Some of the exhibits that have been admitted into evidence have had portions
26 deleted from them for legal reasons. Do not concern yourselves with the reasons why some
27 portions of the exhibits have been deleted. Do not speculate upon what the deleted portions
28 might, or might not, reveal.

29 **Direct and Circumstantial Evidence - RAJI #14**

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

1 **Credibility/Believability of Witnesses - RAJI #15**

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

4 In evaluating testimony, you should use the tests for truthfulness that people use in
5 determining matters of importance in everyday life, including such factors as: the witness's
6 ability to see or hear or know the things the witness testified to; the quality of the witness's
7 memory; the witness's manner while testifying; whether the witness had any motive, bias,
8 or prejudice; whether the witness was contradicted by anything the witness said or wrote
9 before trial, or by other evidence; and the reasonableness of the witness's testimony when
10 considered in the light of the other evidence.

11 Consider all of the evidence in the light of reason, common sense, and experience.

12 **Testimony of Law Enforcement Officers - RAJI #16**

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

17 **Expert Witness - RAJI #17**

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

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

25 **Defendant Need Not Testify - RAJI #18(a)**

26 The defendant is not required to testify. The decision on whether or not to testify is
27 left to the defendant acting with the advice of an attorney. You must not let this choice
28 affect your deliberations in any way. [You must not conclude that the defendant is likely
29 to be guilty because the defendant did not testify.]

30 **Voluntariness of Defendant's Statements - RAJI #19**

31 You must not consider any statements made by the defendant to a law enforcement
32 officer unless you determine beyond a reasonable doubt that the defendant made the
33 statements voluntarily.

1 A defendant's statement was not voluntary if it resulted from the defendant's will
2 being overcome by a law enforcement officer's use of any sort of violence, coercion, or
3 threats, or by any direct or implied promise, however slight.

4 You must give such weight to the defendant's statement as you feel it deserves
5 under all the circumstances.

6 **Defendant Witness (Prior Conviction) - RAJI #21**

7 You must not consider any statements made by the defendant to a law enforcement
8 officer unless you determine beyond a reasonable doubt that the defendant made the
9 statements voluntarily.

10 A defendant's statement was not voluntary if it resulted from the defendant's will
11 being overcome by a law enforcement officer's use of any sort of violence, coercion, or
12 threats, or by any direct or implied promise, however slight.

13 You must give such weight to the defendant's statement as you feel it deserves under
14 all the circumstances.

15 **Absence of Other Participant - RAJI #28 (WITHDRAWN)**

16 **Separate Counts - RAJI #31**

17 You must not consider any statements made by the defendant to a law enforcement
18 officer unless you determine beyond a reasonable doubt that the defendant made the
19 statements voluntarily.

20 A defendant's statement was not voluntary if it resulted from the defendant's will
21 being overcome by a law enforcement officer's use of any sort of violence, coercion, or
22 threats, or by any direct or implied promise, however slight.

23 You must give such weight to the defendant's statement as you feel it deserves under
24 all the circumstances.

25 **Voluntary Act - RAJI #35**

26 Before you may convict the defendant of the charged crime(s), you must find that
27 the State proved beyond a reasonable doubt that the defendant [committed a voluntary act]
28 [omitted to perform a duty imposed upon the defendant by law that the defendant was
29 capable of performing]. A voluntary act means a bodily movement performed consciously
30 and as a result of effort and determination. You must consider all the evidence in deciding
31 whether the defendant [committed the act voluntarily] [failed to perform the duty imposed
32 on the defendant].

33 **Flight or Concealment - RAJI #40**

34 In determining whether the State has proved the defendant guilty beyond a
35 reasonable doubt, you may consider any evidence of the defendant's running away, hiding,

1 or concealing evidence, together with all the other evidence in the case. [You may also
2 consider the defendant’s reasons for running away, hiding, or concealing evidence.]
3 Running away, hiding, or concealing evidence after a crime has been committed does not
4 by itself prove guilt.

5 **Motive - RAJI #44**

6 The State need not prove motive, but you may consider motive or lack of motive in
7 reaching your verdict.

8 **Alibi or Non-Presence of Defendant - RAJI #46**

9 The State has the burden of proving that the defendant was present at the time and
10 place the alleged crime was committed. If you have a reasonable doubt whether the
11 defendant was present at the time and place the alleged crime was committed, you must
12 find the defendant not guilty.

13 **R.A.J.I. STATUTORY CRIMINAL JURY INSTRUCTIONS**

14 **1.0510(a)(1) - Definition of Intentionally – RAJI 1.0510(a)(1)**

15 “Intentionally” [or “with intent to”] as used in these instructions means that a
16 defendant’s objective is to cause that result or to engage in that conduct.

17
18 **1.051(a)(2) - Intent Inference - RAJI #1.051(a)(2)**

19 Intent may be inferred from all the facts and circumstances disclosed by the
20 evidence. It need not be established exclusively by direct sensory proof. The existence of
21 intent is one of the questions of fact for your determination.

22
23 **1.0510(b) - Definition of ‘Knowingly’ - RAJI #1.0510(b)**

24 “Knowingly” means that a defendant acted with awareness of [or belief in] the
25 existence of conduct or circumstances constituting an offense. It does not mean that a
26 defendant must have known the conduct is forbidden by law.

27
28 **1.0510(c) - Definition of ‘Recklessly’ - RAJI #1.0510(c)**

29 “Recklessly [reckless disregard]” means that a defendant is aware of and
30 consciously disregards a substantial and unjustifiable risk that conduct will result in
31 _____. The risk must be of such nature and degree that disregarding it is a gross deviation
32 from what a reasonable person would do in the situation.

33
34 **1.0535 - Definition of ‘Possess’**

35 “Possess” means knowingly to have physical possession or otherwise to exercise
36 dominion or control over property.

1 **R.A.J.I. INSTRUCTIONS APPLICABLE TO CRIMES CHARGED**

2 **COUNT 1 - First Degree Murder - RAJI 11.08**

3 The crime of first-degree premeditated murder requires proof that the defendant:

- 4 1. caused the death of another person; *and*
5 2. intended or knew that [he] [she] would cause the death of another person; *and*
6 3. acted with premeditation.

7 “Premeditation” means that the defendant intended to kill another human being or
8 knew [he] [she] would kill another human being, and that after forming that intent or
9 knowledge, reflected on the decision before killing. It is this reflection, regardless of the
10 length of time in which it occurs, that distinguishes first-degree murder from second degree
11 murder. An act is not done with premeditation if it is the instant effect of a sudden quarrel
12 or heat of passion. [The time needed for reflection is not necessarily prolonged, and the
13 space of time between the intent or knowledge to kill and the act of killing may be very
14 short.]

15
16 **COUNT 2 - Trafficking in Stolen Property in the First Degree - RAJI #23.07.02**

17 The crime of trafficking in stolen property in the first degree requires proof of the
18 following:

- 19 1. the defendant knowingly [initiated] [organized] [planned] [financed] [directed]
20 [managed] [supervised] the theft of the property of another; *and*
21 2. the defendant knowingly [initiated] [organized] [planned] [financed] [directed]
22 [managed] [supervised] the trafficking in the same property; *and*
23 3. the defendant knew such property was stolen.

24 **Definition of Traffic (23.07.02)**

25 “Traffic” means to sell, transfer, distribute, dispense, or otherwise dispose of stolen
26 property to another person, or to buy, receive, possess, or obtain control of stolen property,
27 with the intent to sell, transfer, distribute, dispense, or otherwise dispose of the property to
28 another person.

29 **Definition of Stolen Property (23.07.02)**

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

32 **Definition of ‘Property’ RAJI # 23.07.02**

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

1 **Definition of ‘Property of Another’ 23.07.02**

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

4 **Definition of ‘Control’ or ‘Exercise Control - RAJI 23.07.02**

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

7 **Count 3 - Theft (DISMISSED BY STATE)**

8 **Count 4 - Theft of Credit Card - RAJI #21.02**

9 The crime of theft of a credit card or obtaining a credit card by fraudulent means
10 requires proof that the defendant:

11 controlled a credit card without the cardholder’s or issuer’s consent with the
12 intent to deprive the other person of such property

13 **Definition of ‘Cardholder’ - RAJI 21.01.02**

14 “Cardholder” means any person who is named on the face of a credit card to whom
15 or for whose benefit the credit card is issued by an issuer.

16 **21.01.03 - Definition of ‘credit card’**

17 “Credit card” means:

18 any instrument or device, whether known as a credit card, charge card,
19 or identification card or by any other name, that is issued with or
20 without fee by an issuer for the use of the cardholder in obtaining
21 money, goods, services or anything else of value, either on credit or
22 in possession or in consideration of an undertaking or guaranty by the
23 issuer of the payment of a check drawn by the cardholder, on a
24 promise to pay in part or in full therefor at a future time. The
25 indebtedness, whether all or any part thereof, that is represented by
26 the promise to make deferred payment may be secured or unsecured.

27 **Counts 5 - 18 and Counts 20 - 24 - Taking the Identity of Another - RAJI 28.08(A)**

28 The crime of unlawful taking of another person’s identity requires proof that the
29 defendant knowingly took, possessed or used any personal identifying information of
30 another person without the consent of the other person whether the person is real or
31 fictitious, and with the intent to obtain or use the other person’s identity for any unlawful
32 purpose or to cause loss to the person, whether or not the other person suffered any
33 economic loss as a result of the offense.

34 **Definition of Personal Identifying Information**

35 “Personal identifying information” means any written document or electronic data
36 that does or purports to provide information concerning a name, signature, electronic

1 identifier or screen name or account, biometric identifier, personal identification number,
2 photograph, birth date, savings, checking or other financial account number, credit card,
3 charge card or debit card number.

4 **Count 19 - Forgery - RAJI #20.02**

5 The crime of forgery requires proof that the defendant, with the intent to defraud,
6 falsely made, completed or altered a written instrument.

7 **Definition of Forged Instrument**

8 “Forged instrument” means a written instrument that has been falsely made,
9 completed or altered.

10 **Definition of ‘Falsely Alters’ a Written Instrument**

11 “Falsely alters a written instrument” means to change a complete or incomplete
12 written instrument, without the permission of anyone entitled to grant it, by means of
13 counterfeiting, insertion of new matter, connecting together different parts of the whole of
14 more than one genuine instrument or transposition of matter or in any other manner, so
15 that the altered instrument falsely appears or purports to be in all respects an authentic
16 creation of its ostensible maker or authorized by the maker.]

17 **Definition of ‘Falsely Makes’ a Written Instrument**

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

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Detailed Instructions

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Definitions