IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY CHRIS ROBERT MARTINEZ,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

CASE NO. 83754

JOINT SUPPLEMENTAL APPENDIX TO APPELLANT'S BRIEF

Appeal From The Fourth Judicial District Court
Of The State of Nevada
In And For The County Of Elko

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To The Appellant's Brief

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Dated this 15 day of April, 2022.

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By: _____
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Dated this 14th day of April, 2022.

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CERTIFICATE OF SERVICE

I certify that this document was filed electronically with the Nevada Supreme Court on the 15th day of April, 2022, Electronic Service of the Supplemental JOINT APPENDIX TO APPELLANT'S BRIEF shall be made in accordance with the Master Service List as follows:

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FOURTH JUDICAL DISTRICT COURT
FILED IN OPEN COURT
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Time: 3:38 p.m.
Clerk: DM

CASE NO.: CR-FP-16-9651

DEPT.NO.: 2

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ANTHONY CHRIS ROBERT MARTINEZ,

Defendant.

INSTRUCTION NO. 1

LADIES AND GENTLEMEN:

This instruction is intended to serve as an introduction to the trial of this case. It is not a substitute for the detailed instructions on the law and the evidence which I will give you at the close of the case and before you retire to consider your verdicts.

This is a criminal case commenced by the State of Nevada, which I may sometimes refer to as "the State," against Anthony Chris Robert Martinez. The case is based on a Second Amended Criminal Information, which has been read to you.

You should distinctly understand that the Second Amended Criminal Information simply contains charges. It is not, in any sense, evidence of the allegations it contains. Nor is it a substitute for the instructions containing the elements of the crimes charged that I will give you at the close of this case.

The Defendant has pled "not guilty" to the crimes charged in the Second Amended Criminal Information. Therefore, the State has the burden of proving every element of the crimes charged beyond a reasonable doubt. The purpose of the trial is to determine whether the State can meet this burden.

The trial will proceed in the following order:

First: The parties have the opportunity to make opening statements. The State may make an opening statement at the beginning of the case. The Defendant may make an opening statement following the opening statement for the State, or may defer the making of an opening statement until the close of the State's case. No party is obliged to make an opening statement. What is said in the opening statements is not evidence. The statement simply serves the purpose of discussing the evidence that the party making the statement expects to be admitted.

Second: The State will introduce evidence in support of the crimes charged in the Second Amended Criminal Information.

Third: After the State has presented its evidence, the Defendant may present evidence; however, he is not obliged to do so. The burden is always on the State to prove every element of the crimes charged beyond a reasonable doubt. The law never imposes on the defendant in a criminal case the burden of calling any witnesses or introducing any evidence.

Fourth: I will instruct you on the applicable law. Your verdict must be unanimous.

Fifth: After the reading of the instructions, the parties have the opportunity to present oral argument in support of their respective cases. What is said in closing argument is not evidence, just as what is said in the opening statements is not evidence. The arguments are designed to present to you the contentions of the parties as to what the evidence has shown, and what inferences may be drawn from the evidence. The State has the right to open and close the argument.

Your purpose as jurors is to find and determine the facts. Under our system of criminal procedure you are the sole judge of the facts. If, at any time, I should make any comment regarding the facts, you are admonished to disregard it. It is especially important that you perform your duty of determining the facts diligently and conscientiously, for ordinarily there is no means of correcting an erroneous determination of the facts by a jury.

On the other hand, and with equal emphasis, I instruct you that the law as given by the Court constitutes the only law for your guidance. It is your duty to accept and follow it. It is your duty to follow the law as I give it to you even though you may disagree with the law.

You are to determine the facts in the case solely from the evidence produced at trial, which consists of the testimony of witnesses and exhibits admitted in evidence. Questions asked by the lawyers are not evidence, for the evidence consists of answers given by witnesses to questions posed by the lawyers. Again, statements and arguments of counsel are not evidence. Counsel, however, may enter into agreements or stipulations to facts that are not in dispute. When they do so, you are to accept the facts as stipulated by counsel. On occasion, I may tell you that I am taking judicial notice of certain facts. You then may accept those facts as true, but are not required to. It is up to you to decide what inferences are to be drawn from the evidence, and what facts are established by the evidence.

The parties may sometimes present objections to some of the testimony or other evidence. It is the duty of a lawyer to object to evidence that he believes may not properly be offered, and you should not be prejudiced in any way against a lawyer who makes objections or against the party he represents. At times I may sustain objections, or direct that you disregard certain testimony or exhibits. You must not consider any evidence to which an objection has been sustained, or that I have instructed you to disregard.

In considering the weight and value of the testimony of any witness, you may take into consideration the appearance, attitude and behavior of the witness; the extent of his or her opportunity and ability to see or hear or otherwise became aware, and to remember and communicate; the interest of the witness in the outcome of the case, if any; the existence or non-existence of a bias or other motive; the inclination of the witness to speak truthfully or not; the probability or improbability of the statements of the witness; a statement previously made by him or her that is inconsistent with his or her testimony; evidence of the existence or non-existence of any fact testified to by him or her; and all other facts and circumstances in evidence.

No statement, ruling, remark or comment that I may make during the course of the trial is intended to indicate my opinion as to how you should decide the case, or to influence you in any way in your determination of the facts. At times I may ask questions of witnesses. If I do so, it is for the purpose of bringing out matters that I feel should be brought out, and not in any way to indicate my opinion about the facts or to indicate the weight I feel you should give the testimony of the witnesses. I may also find it necessary to admonish the lawyers. If I do, you should not show prejudice toward a lawyer or his client because I have found it necessary to admonish him or her.

It is the duty of an attorney to present to you his client's case in the most favorable light consistent with the truth and the law. During the trial, I ask you not to communicate with the attorneys even on matters having no connection whatsoever with this case. The attorneys are officers of the court, and they are aware of their responsibilities as such. Even if you are acquainted with the attorney, you will observe that he will avoid any contact with you during the trial, and you should not be offended thereby. The lawyer will be attempting merely to comply with the rules of professional conduct in avoiding any appearance of impropriety.

Not only must your conduct as jurors be above reproach, but you must avoid the appearance of any improper conduct. Do not talk to the parties, attorneys or witnesses during the trial, even upon matters unconnected with the case. In the event that anyone should attempt to improperly influence you in any manner, you should promptly report the matter to me or to the bailiff. If you notice anything out of the ordinary, you should promptly report the matter to me or to the bailiff.

You must not consider anything you may have read or heard about the case outside the courtroom, whether before or during the trial.

Under our system of criminal procedure you are not to concern yourself in any way with the sentence that the Defendant might receive if you should find him guilty. Your function is solely to decide whether the Defendant is guilty or not guilty of the charges against him. If, and only if, you find him guilty of a charge or charges in this case, then it becomes the duty of the Court to pronounce sentence.

Until this case is submitted to you, you must not discuss it with anyone, even with your fellow jurors. After it is submitted to you, you must discuss it only in the jury room with your

fellow jurors. It is important that you keep an open mind and not decide any issue in the case until the entire case has been submitted to you under instructions of the Court.

INSTRUCTION NO. 2

You will be given the opportunity to ask written questions of the witnesses called to testify in this case. However, I caution that you are not to consider yourselves advocates, and you are not encouraged to ask large numbers of questions because it is the primary responsibility of each lawyer to present his or her client's case and evidence. You may ask a question that you want to have answered in order to obtain all of the evidence necessary for your deliberations.

Questions may be asked only in the following manner:

After all lawyers have finished questioning a witness, I will ask the jury if it has any questions. Your questions must be written. In order to ask a question, simply raise your hand, and the bailiff will deliver your written question to the court. Questions must be directed to the witness instead of the lawyers or the judge. After consulting with the lawyers at a sidebar conference, the court will determine if your written question is legally proper. If it is, I will ask it. Only questions permissible under the rules of evidence will be asked. No adverse inference should be drawn if the court does not allow a particular question to be asked. After the question has been answered, the court may ask follow-up questions and will permit the lawyers to ask follow-up questions. The jury must not place undue weight on the responses to its questions.

It is not necessary that you spell each word in a given jury question correctly. Please try to be specific with your questions, and cover only one subject with each question. Phonetic spelling is acceptable. Do not concern yourselves with the form of the question because I will reword it so that it is presented to the witness in the proper manner.

INSTRUCTION NO. 3

This is a prosecution by the State of Nevada against Defendant ANTHONY CHRIS ROBERT MARTINEZ. The second amended criminal information, omitting formal parts, reads as follows.

COUNT 1

ATTEMPTED MURDER WITH THE USE OF A DEADLY WEAPON, A CATEGORY B FELONY

COUNT 2

ATTEMPTED MURDER WITH THE USE OF A DEADLY WEAPON, A CATEGORY B FELONY

COUNT 3

BATTERY WITH A DEADLY WEAPON, A CATEGORY B FELONY

COUNT 4

ASSAULT WITH A DEADLY WEAPON, A CATEGORY B FELONY

COUNT 5

ASSAULT WITH A DEADLY WEAPON, A CATEGORY B FELONY

COUNT 6

ATTEMPTED ROBBERY WITH THE USE OF A DEADLY WEAPON, A CATEGORY B FELONY

COUNT 8

ELUDING A POLICE OFFICER IN A MANNER POSING DANGER TO PERSONS OR PROPERTY, A CATEGORY B FELONY

COUNT 9

KIDNAPPING, FIRST DEGREE WITH THE USE OF A DEADLY WEAPON, A CATEGORY A FELONY

The Defendant has entered pleas of not guilty to the charges. Therefore, the burden is on the State of Nevada to prove him guilty of the crimes charged beyond a reasonable doubt.

INSTRUCTION NO. 4

To warrant a conviction of a crime, the Defendant must be proven guilty beyond a reasonable doubt of every element of that crime. The failure to prove any element of a crime beyond a reasonable doubt must result in a verdict of not guilty of that crime.

INSTRUCTION NO. 5

A reasonable doubt is one based on reason. It is not mere possible doubt, but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

INSTRUCTION NO. 6

In order to find the Defendant guilty of Count 1 - Attempted Murder with the Use of a Deadly Weapon (Category B Felony), the jury must conclude that the State has proven every one of the following elements beyond a reasonable doubt.

1. That the Defendant;
2. willfully;
3. and with express malice aforethought;
4. unlawfully;
5. and with the specific intent to kill Miguel Pantelakis;
6. did an overt act or acts toward the commission of the crime of Murder;
7. with the use of a deadly weapon;
8. and which act or acts tended but failed to accomplish the crime of Murder.

The failure to prove all elements beyond a reasonable doubt must result in a verdict of not guilty of this charge.

INSTRUCTION NO. 7

In order to find the Defendant guilty of Count 2 - Attempted Murder with the Use of a Deadly Weapon (Category B Felony), the jury must conclude that the State has proven every one of the following elements beyond a reasonable doubt.

1. That the Defendant;
2. willfully;
3. and with express malice aforethought;
4. unlawfully;
5. and with the specific intent to kill Alejandro Sanchez;
6. did an overt act or acts toward the commission of the crime of Murder;
7. with the use of a deadly weapon;
8. and which act or acts tended but failed to accomplish the crime of Murder.

The failure to prove all elements beyond a reasonable doubt must result in a verdict of not guilty of this charge.

INSTRUCTION NO. 8

In order to find the Defendant guilty of Count 3 – Battery with a Deadly Weapon (Category B Felony), the jury must conclude that the State has proven every one of the following elements beyond a reasonable doubt.

1. That the Defendant;
2. willfully;
3. and unlawfully;
4. used force or violence;
5. upon the person of Rosendo Herrera;
6. with the use of a deadly weapon.

The failure to prove all elements beyond a reasonable doubt must result in a verdict of not guilty of this charge.

INSTRUCTION NO. 9

If after fully and carefully considering Count 3 – Battery with a Deadly Weapon (Category B Felony), you either:

1. Find that the State has not proven the Defendant guilty of Count 3 – Battery with a Deadly Weapon (Category B Felony) beyond a reasonable doubt; or

2. Are unable to agree whether to acquit or convict on that charge, the Defendant may be found guilty of the lesser-included offense of Battery (Misdemeanor) if the evidence is sufficient to establish that he is guilty of that crime beyond a reasonable doubt.

In order to find the Defendant guilty of the lesser-included offense of Battery (Misdemeanor), the jury must conclude that the State has proven every one of the following elements beyond a reasonable doubt:

1. That the Defendant;
2. willfully;
3. and unlawfully;
4. used force or violence;
5. upon the person of Rosendo Herrera.

The failure to prove all elements beyond a reasonable doubt must result in a verdict of not guilty of this lesser-included offense.

INSTRUCTION NO. 10

In order to find the Defendant guilty of Count 4 – Assault with a Deadly Weapon (Category B Felony), the jury must conclude that the State has proven every one of the following elements beyond a reasonable doubt.

1. That the Defendant;
2. willfully;
3. and unlawfully;
4. specifically intended to place Manuel Ruiz in reasonable apprehension of immediate bodily harm;
5. and that the Defendant did so with the use of a deadly weapon or the present ability to use a deadly weapon.

The failure to prove any element beyond a reasonable doubt must result in a verdict of not guilty of this charge.

INSTRUCTION NO. 11

In order to find the Defendant guilty of Count 5 – Assault with a Deadly Weapon (Category B Felony), the jury must conclude that the State has proven every one of the following elements beyond a reasonable doubt.

1. That the Defendant;
2. willfully;
3. and unlawfully;
4. specifically intended to place Ruta Murphy in reasonable apprehension of immediate bodily harm;
5. and that the Defendant did so with the use of a deadly weapon or the present ability to use a deadly weapon.

The failure to prove any element beyond a reasonable doubt must result in a verdict of not guilty of this charge.

INSTRUCTION NO. 12

In order to find the Defendant guilty of Count 6 - Attempted Robbery with the Use of a Deadly Weapon (Category B Felony), the jury must conclude that the State has proven every one of the following elements beyond a reasonable doubt.

1. That the Defendant;
2. willfully;
3. and unlawfully;
4. and with the specific intent to commit the crime of Robbery;
5. did an overt act or acts toward the commission of the crime of Robbery;
6. with the use of a deadly weapon;
7. and which act or acts tended but failed to accomplish the crime of Robbery.

The failure to prove all elements beyond a reasonable doubt must result in a verdict of not guilty of this charge.

INSTRUCTION NO. 13

In order to find the Defendant guilty of Count 8 – Eluding a Police Officer in a Manner Posing Danger to Persons or Property (Category B Felony), the jury must conclude that the State has proven every one of the following elements beyond a reasonable doubt.

1. That the Defendant;
2. unlawfully drove a motor vehicle;
3. in a manner that either endangered or was likely to endanger either:
    a. any other person; or
    b. the property of any other person;
4. while the Defendant was driving the motor vehicle on a highway or premises to which the public has access;
5. and the Defendant was willfully;
6. either:
    a. failing or refusing to bring the vehicle to a stop; or
    b. otherwise fleeing or attempted to elude a peace officer;
7. while the peace officer was:
    a. in a readily identifiable vehicle of any police department; and
    b. using a flashing red lamp and siren to give the Defendant a signal to stop the vehicle that he was driving.

The failure to prove any element beyond a reasonable doubt must result in a verdict of not guilty of this charge.

INSTRUCTION NO. 14

If after fully and carefully considering Count 8 – Eluding a Police Officer in a Manner Posing Danger to Persons or Property (Category B Felony), you either:

1. Find that the State has not proven the Defendant guilty of Count 8 – Eluding a Police Officer in a Manner Posing Danger to Persons or Property (Category B Felony) beyond a reasonable doubt; or

2. Are unable to agree whether to acquit or convict on that charge, the Defendant may be found guilty of the lesser-included offense of Eluding a Police Officer (Misdemeanor) if the evidence is sufficient to establish that he is guilty of that crime beyond a reasonable doubt.

In order to find the Defendant guilty of the lesser-included offense of Eluding a Police Officer (Misdemeanor), the jury must conclude that the State has proven every one of the following elements beyond a reasonable doubt:

1. That the Defendant;
2. unlawfully drove a motor vehicle;
3. on a highway or premises to which the public has access;
4. and the Defendant was willfully;
5. either:
    a. failing or refusing to bring the vehicle to a stop; or
    b. otherwise fleeing or attempted to elude a peace officer;
6. while the peace officer was:
    a. in a readily identifiable vehicle of any police department; and
    b. using a flashing red lamp and siren to give the Defendant a signal to stop the vehicle that he was driving.

The failure to prove all elements beyond a reasonable doubt must result in a verdict of not guilty of this lesser-included offense.

INSTRUCTION NO. 15

In order to find the Defendant guilty of Count 9 – Kidnapping in the First Degree with the Use of a Deadly Weapon (Category A Felony), the jury must conclude that the State has proven every one of the following elements beyond a reasonable doubt.

1. That the Defendant;
2. willfully;
3. and unlawfully;
4. seized, confined, enticed, decoyed, abducted, concealed, kidnapped or carried away Rosendo Herrera;
5. and the Defendant did so with the use of a deadly weapon;
6. and with the specific intent to hold or detain Rosendo Herrera;
7. for the purpose of:
    a. committing robbery upon or from Rosendo Herrera; or
    b. killing Rosendo Herrera; or
    c. inflicting substantial bodily harm upon Rosendo Herrera.

The failure to prove any element beyond a reasonable doubt must result in a verdict of not guilty of this charge.

INSTRUCTION NO. 16

If after fully and carefully considering Count 9 – Kidnapping in the First Degree with the Use of a Deadly Weapon (Category A Felony), you either:

1. Find that the State has not proven the Defendant guilty of Count 9 – Kidnapping in the First Degree with the Use of a Deadly Weapon (Category A Felony) beyond a reasonable doubt; or

2. Are unable to agree whether to acquit or convict on that charge, the Defendant may be found guilty of the lesser-included offense of Kidnapping in the Second Degree with the Use of a Deadly Weapon (Category B Felony) if the evidence is sufficient to establish that he is guilty of that crime beyond a reasonable doubt.

In order to find the Defendant guilty of the lesser-included offense of Kidnapping in the Second Degree with the Use of a Deadly Weapon (Category B Felony), the jury must conclude that the State has proven every one of the following elements beyond a reasonable doubt:

1. That the Defendant;
2. willfully;
3. and unlawfully;
4. seized, took, carried away or kidnapped Rosendo Herrera;
5. and the Defendant did so with the specific intent to keep Rosendo Herrera:
   a. secretly imprisoned within the State of Nevada; or
   b. for the purpose of conveying Rosendo Herrera out of the State of Nevada; or
   c. in any manner held to service or detained against the will of Rosendo Herrera.

The failure to prove all elements beyond a reasonable doubt must result in a verdict of not guilty of this lesser-included offense.

INSTRUCTION NO. 17

In order to find the Defendant guilty of either Kidnapping in the First Degree with the Use of a Deadly Weapon (Category A Felony) or Kidnapping in the Second Degree with the Use of a Deadly Weapon (Category B Felony) in addition to Attempted Robbery with the Use of a Deadly Weapon (Category B Felony), the jury must conclude that the State has proven beyond a reasonable doubt that:

1. any movement of Rosendo Herrera was not incidental to that necessary to attempt to commit robbery upon or from him; or

2. any incidental movement of Rosendo Herrera substantially increased the risk of harm to him over and above that necessary to attempt to commit robbery upon or from him; or

3. any incidental movement of Rosendo Herrera substantially exceeded that required to attempt to commit robbery upon or from him; or

4. the movement had an independent purpose or significance.

INSTRUCTION NO. 18

In every crime or public offense there must exist a union, or joint operation of act and intention.

INSTRUCTION NO. 19

Intention is manifested by the circumstances connected with the perpetration of the offense, and the sound mind and discretion of the person accused.

INSTRUCTION NO. 20

Attempted Murder with the Use of a Deadly Weapon (Category B Felony), Assault with a Deadly Weapon (Category B Felony), Attempted Robbery with the Use of a Deadly Weapon (Category B Felony), Kidnapping in the First Degree with the Use of a Deadly Weapon (Category A Felony), and Kidnapping in the Second Degree (Category B Felony) are specific intent crimes.

Specific intent is the intent to accomplish the precise act the law prohibits.

INSTRUCTION NO. 21

Battery with a Deadly Weapon (Category B Felony) and Eluding a Police Officer in a Manner Posing Danger to Persons or Property (Category B Felony), and Eluding a Police Officer (Misdemeanor) are general intent crimes.

General intent is the intent to do that which the law prohibits. It is not necessary for the State to prove that a defendant alleged to have committed a general intent crime intended the precise harm or result that may have occurred.

INSTRUCTION NO. 22

The word "willfully," as used in these instructions with respect to proscribed conduct, relates to an act or omission that is done intentionally, deliberately, or designedly, as distinguished from an act or omission done accidentally, inadvertently, or innocently.

INSTRUCTION NO. 23

The unlawful killing of a human being with express malice aforethought is Murder. Express malice is that deliberate intention unlawfully to take away the life of a fellow human being, which is manifested by external circumstances capable of proof.

INSTRUCTION NO. 24

A specific intent to kill may be ascertained or deduced from the facts and circumstances, such as the manner of use of any deadly weapon used by a defendant charged with Attempted Murder with the Use of a Deadly Weapon (Category B Felony) and other attendant circumstances.

INSTRUCTION NO. 25

In considering whether the Defendant did any overt act with express malice, the jury may consider whether he: (1) deliberated or premeditated the commission of the crime of Murder before performing the act; (2) performed the act to avoid or prevent his lawful arrest by a police officer; or (3) both deliberated or premeditated the commission of the crime of Murder before performing the act and performed the act to avoid or prevent his lawful arrest by a police officer. In deciding whether the Defendant did any overt act with express malice, the jury shall accord the weight that it finds appropriate for the presence or absence of these circumstances.

INSTRUCTION NO. 26

Deliberation is the process of determining upon a course of action to kill as a result of thought, including weighing the reasons for and against the action and considering the consequences of the action.

A deliberate determination may be arrived at in a short period of time. But in all cases the determination must not be formed in passion, or if formed in passion, it must be carried out after there has been time for the passion to subside and deliberation to occur. A mere unconsidered and rash impulse is not deliberate, even though it includes the intent to kill.

Premeditation is a design, a determination to kill, distinctly formed in the mind by the time of any overt act toward the commission of the crime of Murder.

Premeditation need not be for a day, an hour, or even a minute. It may be as instantaneous as successive thoughts of the mind. For if the jury believes from the evidence that any overt act has been preceded by and has been the result of premeditation, no matter how rapidly the act follows the premeditation, it is premeditated.

The law does not undertake to measure in units of time the length of the period during which the thought must be pondered before it can ripen into an intent to kill which is truly deliberate and premeditated. The time will vary with different individuals and under varying circumstances.

The true test is not the duration of time, but rather the extent of the reflection. A cold, calculated judgment and decision may be arrived at in a short period of time, but a mere unconsidered and rash impulse, even though it includes an intent to kill, is not deliberation and premeditation.

INSTRUCTION NO. 27

As used in these instructions, the words "deadly weapon" include a firearm.

INSTRUCTION NO. 28

For a police officer to lawfully initiate a traffic stop, there must be, at a minimum, reasonable suspicion to justify the stop. Reasonable suspicion is not a stringent standard, but it does require something more than a police officer's hunch. A police officer has a reasonable suspicion justifying a traffic stop if there are specific, articulable facts supporting an inference of criminal activity by the person to be stopped. In determining the reasonableness of a stop, the evidence is viewed under the totality of the circumstances and in the context of the law enforcement officer's training and experience.

INSTRUCTION NO. 29

Any police officer may detain any person whom the officer encounters under circumstances which reasonably indicate that the person has committed, is committing or is about to commit a crime. The police officer may arrest a person so detained if probable cause for an arrest appears. Probable cause to arrest the person exists when a police officer has reasonably trustworthy information of facts and circumstances that are sufficient in themselves to warrant a person of reasonable caution to believe that an offense has been or is being committed by the person to be arrested.

If necessary to prevent the person's escape, a police officer may, after giving a warning, if feasible, use deadly force to effect the arrest of the person only if there is probable cause to believe that the person:

1. Has committed a felony which involves the infliction or threat of serious bodily harm or the use of deadly force; or

2. Poses a threat of serious bodily harm to the officer or to others.

Probable cause to use deadly force to effect the arrest of the person exists when a police officer has reasonably trustworthy information of facts and circumstances that are sufficient in themselves to warrant a person of reasonable caution to believe that the person to be arrested: (1) has committed a felony that involves the infliction or threat of serious bodily harm or the use of deadly force; or (2) poses a threat of serious bodily harm to the officer or to others.

If a police officer is justified in using deadly force to effect the arrest of a person, the officers need not stop using that force until a reasonable officer would believe the threat has ended. A police officer so justified may keep using deadly force until the threat is over.

INSTRUCTION NO. 30

The threat of bodily injury is justifiable, and does not constitute a public offense, if done under circumstances that would justify homicide.

Justifiable homicide is the killing of a human being in necessary self-defense against an individual who manifestly intends, or endeavors, by violence or surprise, to commit a felony against the person defending himself.

The right of self-defense is not available to an original aggressor, that is a person who has sought a quarrel with the design to force a deadly issue and thus through his fraud, contrivance or fault, to create a real or apparent necessity for making a felonious assault.

However, where a person, without voluntarily seeking, provoking, inviting, or willingly engaging in a difficulty of his own free will, is attacked by an assailant, he has the right to stand his ground and need not retreat when faced with the threat of deadly force.

INSTRUCTION NO. 31

As they pertain to Battery with a Deadly Weapon (Category B Felony) and Battery (Misdemeanor), the words "force" and "violence" are synonymous and mean any unlawful application of physical force against the person of another, even if it causes no pain or bodily harm or leaves no mark and even though only the feelings of the other person are injured by the act. The slightest unlawful touching, if done in an insolent, rude, or angry manner, is sufficient. It is not necessary that the touching be done in actual anger or with actual malice; it is sufficient if it was unlawful and unjustifiable. The touching essential to a battery may be a touching of the person, of the person's clothing, or of something attached to or closely connected to the person.

INSTRUCTION NO. 32

Robbery is the unlawful taking of personal property from the person of another, or in the person's presence, against his or her will, by means of force or violence or fear of injury, immediate or future, to his or her person.

A taking is by means of force or fear if force or fear is used to: (a) obtain or retain possession of the property; (b) prevent or overcome resistance to the taking; or (c) facilitate escape.

INSTRUCTION NO. 33

A taking constitutes robbery if it is attended with circumstances of terror, such as a threatening word or gesture as in common experience is likely to create an apprehension of danger and induce a person to part with his property for the safety of his person.

INSTRUCTION NO. 34

In order to find a defendant guilty of Attempted Robbery with the Use of a Deadly Weapon (Category B Felony), it is not necessary that the jury conclude beyond a reasonable doubt that any personal property attempted to be taken from another person, or in that person's presence, belongs to or is owned by the other person.

INSTRUCTION NO. 35

The value of any property or money attempted to be taken is not an element of the crime of Attempted Robbery with the Use of a Deadly Weapon (Category B Felony).

INSTRUCTION NO. 35A

Attempted robbery is often not confined to a fixed locus, but spread over considerable and varying periods of time. All matters immediately antecedent to and having a direct causal connection with the attempted robbery are thus deemed so closely connected with the attempted robbery so as to form, in reality, a part of the occurrence.

INSTRUCTION NO. 36

A minimum distance of movement is not necessary to support a charge of Kidnapping in the First Degree with the Use of a Deadly Weapon (Category A Felony) or its lesser-included offense of Kidnapping in the Second Degree with the Use of a Deadly Weapon (Category B Felony). It is the fact, not the distance, of movement of a victim that is controlling. In other words, there does not have to be any appreciable movement of the victim as long has he was taken from one place to another.

INSTRUCTION NO. 37

Every person charged with the commission of a crime shall be presumed innocent until the contrary is proved by competent evidence beyond a reasonable doubt. This is a presumption of law with which a defendant is clothed, and it abides with him throughout the entire trial until it is overcome by competent evidence sufficient in your minds to establish he is guilty of a crime beyond a reasonable doubt. In determining whether a defendant is guilty or not guilty of a crime, it is not necessary that he establish his innocence, but it is sufficient in order to warrant an acquittal if a reasonable doubt exists in your minds as to his guilt, and it makes no difference whether the reasonable doubt thus created exists or is established from the evidence produced on the part of the State or that produced on the part of the Defendant, or from the lack of evidence, or its unreliability or weight.

INSTRUCTION NO. 38

There are two types of evidence that a jury may properly consider. One is direct evidence, such as the testimony of an eyewitness. The other is circumstantial evidence, proof of a chain of circumstances pointing to the commission of a crime.

As a general rule, the law makes no distinction between direct and circumstantial evidence. It simply requires that, before convicting a defendant of a crime, the jury be satisfied of his guilt of that crime beyond a reasonable doubt. Facts may be proven by direct evidence or circumstantial evidence. Both direct evidence and circumstantial evidence are acceptable as a means of proof. Neither is necessarily entitled to a greater weight than the other.

INSTRUCTION NO. 39

Intent may be proven by circumstantial evidence. It rarely can be established by any other means. While witnesses may see and hear and thus be able to give direct evidence of what a defendant does or fails to do, there can be no eyewitness account of a state of mind with which acts are done or omitted, but what a defendant does or fails to do may indicate intent or lack of intent to commit a crime.

In determining the issue as to intent, the jury is entitled to consider any statements made and acts done or omitted by a defendant, and all facts and circumstances in evidence which may aid determination of state of mind.

INSTRUCTION NO. 40

You have heard the testimony of law enforcement officers. The fact that a witness may be employed as a law enforcement officer does not mean that his testimony necessarily deserves more or lesser consideration, or greater or lesser weight, than that of an ordinary witness.

It is your decision, after considering all the evidence, whether to accept the testimony of a witness employed as a law enforcement officer, and to give to that testimony whatever weight, if any, you find it deserves.

INSTRUCTION NO. 41

The flight of a person immediately after the commission of a crime, or after he is accused of a crime, is not sufficient in itself to establish his guilt, but is a fact that, if proved, may be considered by the jury in the light of all other proved facts in deciding whether a defendant is guilty or not guilty of a crime. The weight to which this circumstance is entitled is a matter for the jury to determine.

INSTRUCTION NO. 42

You may have heard evidence that a witness made statements on an earlier occasion that an attorney argues are inconsistent with the witness's trial testimony.

If you find that a witness made earlier statements that conflict with his or her trial testimony, you may consider that fact in deciding how much of his or her trial testimony, if any, to believe.

In making this determination, you may consider whether the witness purposely made a false statement, or whether it was an innocent mistake; whether the inconsistency concerns an important fact, or whether it had to do with a small detail; whether the witness had an explanation for the inconsistency, and whether that explanation appealed to your common sense.

It is exclusively your duty, based upon your consideration of all the evidence and your own good judgment, to determine whether the prior statements were inconsistent. If you find that a witness made prior inconsistent statements, it is your duty to determine how much, if any, weight should be given to the inconsistent statements.

Evidence that at some other time a witness made a statement or statements that is or are inconsistent with his or her trial testimony may be considered by you for not only the purpose of testing the credibility of the witness, but also as evidence of the truth of the facts as stated by the witness on that former occasion.

INSTRUCTION NO. 43

A witness willfully false in one material part of his or her testimony is to be distrusted in others. You may reject the whole testimony of a witness who willfully has testified falsely as to a material point, unless you shall believe the probability of truth favors his or her testimony in other particulars. However, discrepancies in the testimony of a witness or between his or her testimony and that of others, if there were any, do not necessarily mean that the witness should be discredited. Failure of recollection is not uncommon. It is a fact also that two persons witnessing an incident or a transaction often will see or hear it differently. Whether a discrepancy pertains to a fact of importance or only to a trivial detail should be considered in weighing its significance.

INSTRUCTION NO. 44

At this trial, the court admitted the testimony of witnesses at a preliminary hearing. The jury shall give the testimony the weight to which you find it to be entitled.

INSTRUCTION NO. 45

A statement made by the Defendant other than at this trial may be an admission or a confession.

An admission is a statement by a defendant that, by itself, is not sufficient to warrant an inference of guilt, but which tends to prove guilt when considered with the rest of the evidence.

A confession is a statement by a defendant that discloses his intentional participation in a criminal act for which he is on trial and that discloses his guilt of a crime.

You are the exclusive judges as to whether an admission or a confession was made by the Defendant, and, if so, whether such statement is true, in whole or in part. If you should find that any such statement is entirely untrue, you must reject it. If you find it is true in part, you may give the weight you deem appropriate to the part that you find to be true.

INSTRUCTION NO. 46

Evidence may have been admitted that tends to show the Defendant committed wrongs or acts other than that for which he is on trial.

Such evidence was not received and may not be considered by you to prove that he is a person of bad character or that he has a disposition to commit crimes.

Such evidence was received and may be considered by you only for the limited purpose of determining if it tends to prove motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, or a common scheme or plan.

For the limited purpose for which you may consider such evidence, you must weigh it in the same manner as you do all other evidence in the case.

You are not permitted to consider such evidence for any other purpose.

INSTRUCTION NO. 47

A person is qualified to testify as an expert if he or she has special knowledge, skill, experience, training, or education sufficient to qualify him or her as an expert on the subject to which his or her testimony relates.

Duly qualified experts may give their opinions on questions in controversy at a trial. To assist you in deciding such questions, you may consider the opinion with the reasons given for it, if any, by the expert who gives the opinion. You may also consider the qualifications and credibility of the expert.

You are not bound to accept an expert opinion as conclusive, but should give to it the weight to which you find it to be entitled. You may disregard any such opinion if you find it to be unreasonable.

INSTRUCTION NO. 48

In 2016, Nevada law did not require police officers to wear body-worn cameras. In 2016, Nevada law did not require law enforcement agencies to equip their vehicles with cameras.

INSTRUCTION NO. 48A

In a criminal investigation, police officers generally have no duty to collect all items of possible evidentiary value. However, a defendant is free to examine the State's witnesses about their investigative deficiencies. To the extent the jury finds that there were investigative deficiencies in this case, you shall give that finding the weight to which you find it to be entitled.

INSTRUCTION NO. 49

Motive is not an element of a crime and need not be shown. However, you may consider motive or lack of motive as a circumstance in this case. Presence of motive may tend to establish guilt. Absence of motive may tend to establish a lack of guilt. You will therefore give the presence or absence of motive—as the case may be—the weight to which you find it to be entitled.

INSTRUCTION NO. 50

It is not necessary to call as witnesses all persons who may have been present at any of the events disclosed by the evidence or who may appear to have some knowledge of these events, or to produce all objects or documents mentioned or suggested by the evidence.

INSTRUCTION NO. 51

You are here to determine whether the Defendant is guilty or not guilty of crimes. You are not being asked to return a verdict as to whether any other person is guilty or not guilty of a crime. If you conclude that the Defendant is guilty of a crime beyond a reasonable doubt, you should find him guilty of that crime even though you may believe one or more other persons are also guilty of the crime.

INSTRUCTION NO. 52

A verdict of "not guilty" of a crime is not the equivalent of a finding of innocence. Such a verdict is merely a determination that the commission of the crime was not proven beyond a reasonable doubt in the proceeding in which the verdict was rendered.

Whether the Defendant is guilty or not guilty of the charges or any lesser offenses is for you to decide in this proceeding.

INSTRUCTION NO. 53

It is your duty as jurors to consult with one another and to deliberate with a view of reaching an agreement if you can do so without violence to your individual judgment. You each must decide the case for yourselves, but should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion if you become convinced that it is erroneous. However, you should not be influenced to vote in a particular way on any question submitted to you by the single fact that a majority of the jurors, or any of them, favor such a decision. In other words, you should not surrender your honest convictions concerning the effect or weight of the evidence for the mere purpose of returning a verdict or solely because of the opinion of the other jurors.

INSTRUCTION NO. 54

You are further instructed that you should also keep in mind the importance to the parties of the results of your deliberations and be just to the Defendant as well as to the State. Both the Defendant and the State have a right that you determine, and they do so demand and expect, that you will carefully and dispassionately weigh and consider the evidence and the law of the case, and give each your conscientious judgment; and, that you will reach verdicts that will be just to both sides, regardless of the consequences of those verdicts.

INSTRUCTION NO. 55

If, during your deliberation, you should desire to be further informed on any point of law or hear again portions of the testimony, you must reduce your request to writing signed by the foreperson. The bailiff will then return you to the court where the information sought will be given to you in the presence of, and after notice to, the State and the Defendant and their attorneys.

Read backs of testimony are time consuming and are not encouraged unless you deem it a necessity. Should you require a read back, you must carefully describe the testimony to be read back so that the court reporter can arrange her notes. Remember, the court is not at liberty to supplement the evidence.

INSTRUCTION NO. 56

The court has already instructed you that you are the sole judges of the testimony and other evidence, and of the weight to be given the same. In determining questions of fact presented in this case, you should be governed solely by the evidence introduced and admitted before you. You are to bring to the consideration of the evidence before you your everyday common sense and judgment as reasonable men and women.

INSTRUCTION NO. 57

Jurors shall not conduct any form of independent research, investigations, or experiments prior to or during jury deliberations. This prohibition includes, but is not limited to:

1. communicating with anyone in any way regarding this case or its merits, by phone, email, text, the internet, or other means;
2. reading, watching, or listening to any news or media accounts or commentary about this case;
3. doing any research, such as consulting dictionaries, using the internet, or using reference materials; and
4. making any investigation, testing a theory of the case, re-creating any aspect of this case, or in any other way investigating or learning about this case on one's own.

INSTRUCTION NO. 58

Every member of the jury has been permitted to take notes during the trial. However, you are cautioned not to rely upon your respective notes in the case of a conflict among those notes because the court reporter's notes contain the complete authentic record of the trial.

INSTRUCTION NO. 59

In this case there are 19 possible verdicts. These possible verdicts are listed in the verdict form that you will receive. You will choose your own foreperson, and when you all have agreed upon your verdicts, have him or her check the boxes corresponding to the verdicts that you have reached.

INSTRUCTION NO. 60

LADIES AND GENTLEMEN, it takes all twelve of you to agree upon your verdicts in this matter. When you have agreed upon your verdicts and your foreperson has checked the boxes corresponding to the verdicts that you have reached, you will have the verdict form signed by the foreperson and returned to the court. In determining whether the Defendant is guilty or not guilty of the charges or any lesser-included offenses, you will consider and weigh the evidence admitted at this trial, find the facts, and apply the law as instructed by the court.

Instructions 1 through 60, given by the court.

ALVIN R. (AL) KACIN
DISTRICT JUDGE

07/13/2021