

Criminal Jury Charges NJ

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GENERAL INFORMATION

Ladies and Gentlemen of the Jury, the evidence in this case has been presented and the attorneys have completed their summations. We now arrive at that time when you, as jurors, are to perform your final function in this case.

At the outset, let me express my thanks and appreciation to you for your attention to this case. I would like to commend counsel for the professional manner in which they have presented their respective cases and for their courtesy to the court and jury during the course of this trial.

Before you retire to deliberate and reach your verdict, it is my obligation to instruct you as to the principles of law applicable to this case. You shall consider my instructions in their entirety and not pick out any particular instruction and overemphasize it.

You must accept and apply this law for this case as I give it to you in this charge. Any ideas you have of what the law is or what the law should be or any statements by the attorneys as to

what

the law may be, must be disregarded by you, if they are in conflict with my charge.

During the course of the trial, I was required to make certain rulings on the admissibility of the evidence either in or outside of your presence. These rulings involved questions of law.

The

comments of the attorneys on these matters were not evidence. In ruling, I have decided questions

of law and, whatever the ruling may have been in any particular instance, you should understand that

it was not an expression or opinion by me on the merits of the case. Neither should my other rulings

on any other aspect of the trial be taken as favoring one side or the other. Each matter was decided

on its own merits.

When I use the term "evidence" I mean the testimony you have heard and seen from this witness box and the exhibits that have been admitted into evidence. Any testimony that I may have

had occasion to strike is not evidence and shall not enter in your final deliberations. It must be

disregarded by you. This means that even though you may remember the testimony you are not to

use it in your discussions or deliberations. Further, if I gave a limiting instruction as to how to use

certain evidence, that evidence must be considered by you for that purpose only. You cannot

use it

for any other purpose.

As jurors, it is your duty to weigh the evidence calmly and without passion, prejudice or sympathy. Any influence caused by these emotions has the potential to deprive both the State and

the defendant(s) of what you promised them - a fair and impartial trial by fair and impartial jurors.

Also, speculation, conjecture and other forms of guessing play no role in the performance of your duty.

NATURE OF INDICTMENT

The defendant(s) stand(s) before you on an indictment returned by the grand jury charging (him/her) with:

The indictment is not evidence of the defendant's guilt on the charge(s). An indictment is a step in the procedure to bring the matter before the court and jury for the jury's ultimate determination as to whether the defendant is guilty or not guilty on the charge(s) stated in it.

The defendant has pleaded not guilty to the charge(s).

PRESUMPTION OF INNOCENCE, BURDEN OF PROOF, REASONABLE DOUBT

The defendant on trial is presumed to be innocent and unless each and every essential

element of an offense charged is proved beyond a reasonable doubt, the defendant must be found not guilty of that charge.

The burden of proving each element of a charge beyond a reasonable doubt rests upon the State and that burden never shifts to the defendant. The defendant in a criminal case has no obligation or duty to prove his/her innocence or offer any proof relating to his/her innocence.

The prosecution must prove its case by more than a mere preponderance of the evidence, yet not necessarily to an absolute certainty.

The State has the burden of proving the defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases, where you were told that it is necessary to prove only that a fact is more likely true than not true. In criminal cases, the State's proof must be more powerful than that. It must be beyond a reasonable doubt.

A reasonable doubt is an honest and reasonable uncertainty in your minds about the guilt of the defendant after you have given full and impartial consideration to all of the evidence. A reasonable doubt may arise from the evidence itself or from a lack of evidence. It is a doubt that a reasonable person hearing the same evidence would have.

Proof beyond a reasonable doubt is proof, for example, that leaves you firmly convinced of the defendant's guilt. In this world, we know very few things with absolute certainty. In criminal cases the law does not require proof that overcomes every possible doubt. If, based on your

consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find [him/her] guilty. If, on the other hand, you are not firmly convinced of defendant's guilt, you must give defendant the benefit of the doubt and find [him/her] not guilty.

FUNCTION OF THE JURY

In my preliminary charge when we started the case, I explained to you that you are the judges of the facts and, as judges of the facts, you are to determine the credibility of the various witnesses as well as the weight to be attached to their testimony. You and you alone are the sole and exclusive judges of the evidence, of the credibility of the witnesses and the weight to be attached to the testimony of each witness.

Regardless of what counsel said or I may have said recalling the evidence in this case, it is your recollection of the evidence that should guide you as judges of the facts. Arguments, statements, remarks, openings and summations of counsel are not evidence and must not be treated as evidence. Although the attorneys may point out what they think important in this case, you must rely solely upon your understanding and recollection of the evidence that was admitted during the trial. Whether or not the defendant has been proven guilty beyond a reasonable doubt is for

you to

determine based on all the evidence presented during the trial. Any comments by counsel are

not

controlling.

It is your sworn duty to arrive at a just conclusion after considering all the evidence which was presented during the course of the trial.

FUNCTION OF THE COURT

The function of the court is separate and distinct from the function of the jury. It is my responsibility to determine all questions of law arising during trial and to instruct the jury as to the

law which applies in this case. You must accept the law as given to you by me and apply it to the

facts as you find them to be.

I have sustained objections to some questions asked by counsel which may have contained statements of certain facts. The mere fact that an attorney asks a question and inserts facts or comments or opinions in that question in no way proves the existence of those facts. You will only

consider such facts which in your judgment have been proven by the testimony of witnesses or from

exhibits admitted into evidence by the court.

JUDGE'S QUESTIONING

The fact that I may have asked questions of a witness in the case must not influence you in any way in your deliberations. The fact that I asked such questions does not indicate that I hold any opinion one way or the other as to the testimony given by the witness. Any remarks made by me to counsel or by counsel to me or between counsel, are not evidence and should not affect or play any part in your deliberations.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

Evidence may be either direct or circumstantial. Direct evidence means evidence that directly proves a fact, without an inference, and which in itself, if true, conclusively establishes that fact. On the other hand, circumstantial evidence means evidence that proves a fact from which an inference of the existence of another fact may be drawn.*

An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts established by the evidence. Whether or not inferences should be drawn is for you to decide using your own common sense, knowledge and every day experience. Ask yourselves

is it probable, logical and reasonable.

It is not necessary that all the facts be proven by direct evidence. They may be proven by direct evidence, circumstantial evidence or by a combination of direct and circumstantial evidence.

All are acceptable as a means of proof. In many cases, circumstantial evidence may be more certain, satisfying and persuasive than direct evidence.

*Reference example given in preliminary charge.

However, direct and circumstantial evidence should be scrutinized and evaluated carefully.

A verdict of guilty may be based on direct evidence alone, circumstantial evidence alone or a combination of direct evidence and circumstantial evidence provided, of course, that it convinces

you of a defendant's guilt beyond a reasonable doubt. The reverse is also true, a defendant may be

found not guilty by reason of direct evidence, circumstantial evidence, a combination of the two or a

lack of evidence if it raises in your mind a reasonable doubt as to the defendant's guilt.

CREDIBILITY OF WITNESSES

As the judges of the facts, you are to determine the credibility of the witnesses and, in determining whether a witness is worthy of belief and therefore credible, you may take into consideration:

the appearance and demeanor of the witness;

the manner in which he or she may have testified;

the witness's interest in the outcome of the trial if any;
his or her means of obtaining knowledge of the facts;
the witness's power of discernment meaning their judgment -understanding;
his or her ability to reason, observe, recollect and relate;
the possible bias, if any, in favor of the side for whom the witness testified;
the extent to which, if at all, each witness is either corroborated or contradicted, supported or discredited by other evidence;
whether the witness testified with an intent to deceive you;
the reasonableness or unreasonableness of the testimony the witness has given;
whether the witness made any inconsistent or contradictory statement;
and any and all other matters in the evidence which serve to support or discredit his or her testimony.

Through this analysis, as the judges of the facts, you weigh the testimony of each witness and then determine the weight to give to it. Through that process you may accept all of it, a portion of it

(CHARGE, IF APPLICABLE MODEL CHARGE(S) (ATTACHED) ON: DEFENDANT'S ELECTION NOT TO TESTIFY, PRIOR CONVICTION OF A DEFENDANT, PRIOR CONVICTION OF A WITNESS, CREDIBILITY OF WITNESS-PRIOR ADJUDICATION OF DELINQUENCY, EXPERT TESTIMONY, TESTIMONY OF CHARACTER WITNESS, PRIOR CONTRADICTORY STATEMENTS OF WITNESSES, STATEMENT BY DEFENDANT (WHERE ADMISSIBLE FOR CREDIBILITY), ORAL STATEMENTS OF DEFENDANT, WITNESS IMMUNITY)

FALSE IN ONE - FALSE IN ALL

(A TRIAL JUDGE, IN (HIS/HER) DISCRETION, MAY GIVE THIS CHARGE IN ANY SITUATION IN WHICH (HE/SHE) REASONABLY BELIEVES A JURY MAY FIND A BASIS

FOR ITS APPLICATION - SEE STATE V. ERNST, 32 N.J. 567 (1960)).

If you believe that any witness or party willfully or knowingly testified falsely to any material facts in the case, with intent to deceive you, you may give such weight to his or her testimony as you may deem it is entitled. You may believe some of it, or you may, in your discretion, disregard all of it.

MULTIPLE CHARGES

There are _____ offenses charged in the indictment. They are separate offenses by separate counts in the indictment. In your determination of whether the State has proven the defendant guilty of the crimes charged in the indictment beyond a reasonable doubt, the defendant is entitled to have each count considered separately by the evidence which is relevant and material to that particular charge based on the law as I will give it to you.

(CHARGE WHERE APPLICABLE)

WHERE MORE THAN ONE DEFENDANT:1

You must also return separate verdicts for each defendant as to each of the charges being tried. In other words, you will have to decide each case individually. Whether the verdicts as

to

each defendant are the same depends on the evidence and your determination as judges of the facts.

CHARGE SPECIFIC OFFENSES AND LESSER INCLUDED

[CHARGE IF APPLICABLE MODEL CHARGE(S) ON: FINGERPRINTS, IDENTIFICATION, ALIBI, IDENTITY-POLICE PHOTOS, FLIGHT]

1

When accomplice liability is involved charge according to State v. Bielkiewicz, 267 N.J. Super. 520 (App. Div. 1993).

DELIBERATIONS

That concludes my instructions as to the principles of law regarding the offense(s) charged in the indictment.

There is nothing different in the way a jury is to consider the proof in a criminal case from that in which all reasonable persons treat any questions depending upon evidence presented to them.

You are expected to use your own good common sense; consider the evidence for only those purposes for which it has been admitted and give it a reasonable and fair construction in the light of your knowledge of how people behave. It is the quality of the evidence, not simply the number of

witnesses that control.

Anything that has not been marked into evidence cannot be given to you in the jury room even though it may have been marked for identification. Only those items marked in evidence can be given to you.

Very shortly you will go into the jury room to start your deliberations. I remind you that, during deliberations, and, in fact, any time that you are in the jury deliberation room, you must keep any cell phone, pager or other communication device you may possess turned off.

You are to apply the law as I have instructed you to the facts as you find them to be, for the purpose of arriving at a fair and correct verdict. The verdict must represent the considered judgment of each juror and must be unanimous as to each charge. This means all of you must agree if the defendant is guilty or not guilty on each charge.

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous but do not surrender your honest conviction as to

the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict. You are not partisans. You are judges--judges of the facts.

UNANIMOUS VERDICT

You may return on each crime charged a verdict of either not guilty or guilty. Your verdict, whatever it may be as to each crime charged, must be unanimous. Each of the twelve members of the deliberating jury must agree as to the verdict.¹

NOTE: In some cases, a specific unanimity instruction is appropriate. See *State v. Parker*, 124 N.J. 628 (1991) and *State v. Frisby*, 174 N.J. 583 (2002). In those cases, a judge should instruct a jury that it must be unanimous as to a particular theory of a case or as to a particular set of facts. The Judge must also provide the jury a special verdict form in such cases.

1

See *State v. Milton*, 178 N.J. 421 (2004), setting forth the process to be used in determining the unanimity of the verdict.

INSTRUCTIONS AS TO VERDICT FORM

To assist you in reporting a verdict I have prepared a verdict sheet for you. You will have this with you in the jury room. This verdict form is not evidence.

[Go Over Form With Jury]

JURY QUESTIONS

If, during your deliberations, you have a question or feel that you need further assistance or instructions from me, write your question on a sheet of paper and give it to the sheriff's officer who will be standing at the jury room door who, in turn, will give it to me.

I will then go over the question with the lawyers and I will try to answer it as quickly as possible. Please be patient. If you do send out a question do not disclose where you stand on your deliberations. Do not tell us, as an example, that you are 10 to 2 or 8 to 4 on a given charge. If you have reached a unanimous verdict on each charge, knock on the door and let the sheriff's officer know that and we will bring you into court as soon as possible to receive your verdict.

[I have come to the end of my charge.]

[Do sidebar to give counsel opportunity to note objections on the record or excuse jury for that

purpose]

{Recharge if Necessary}

SELECTING ALTERNATES

We will now reduce the jury to twelve. The alternates will be selected at random.

(SELECT ALTERNATES AND REMOVE FROM JURY BOX)

APPOINTING FOREPERSON:

(Juror's Name) you are the foreperson of the jury because of your position in the jury box.¹ You will preside over the deliberations and tell us the verdict when reached. Your vote carries no greater weight than that of any other deliberating juror.

It is your responsibility to lead deliberations. It is also your responsibility to tell us what the verdict is when the jury has reached it. When you come out with your verdict, please resume the

seats you now have. We will make certain everyone is here. We will then ask the foreperson to

stand to confirm that you have arrived at a verdict.

We will read each charge and will ask the foreperson what the verdict is as to each. The foreperson will answer with the verdict on each charge. We then poll each of the deliberating jurors

to confirm his or her agreement with the verdict announced by the foreperson.²

As soon as the officers are sworn you will proceed to the jury room, but do not begin your deliberations until the jury verdict form and/or exhibits have been delivered to you.

1

See R. 1:8-4, designating juror number one as the foreperson, unless that juror is designated an alternate or otherwise discharged.

2

In *State v. Milton*, 178 N.J. 421 (2004), the New Jersey Supreme Court addressed the polling process after the jury returns a verdict. The court must establish that each juror assented in the jury room, and still assents, to the verdict tendered to the court. 178 N.J. at 432-433.

SWEAR IN SHERIFF'S OFFICERS

Counsel please review all the evidence and the verdict sheet and make sure they are in order. If they are in order please state so on the record.

(JURY RETIRES TO JURY ROOM)

(CHARGE ALTERNATES)

You are not excused as juror(s). You will be kept in a separate location in case it becomes necessary to substitute one or both of you for another juror or jurors. You should not therefore discuss this case with anyone or between the two of you. If it becomes necessary to substitute an alternate I will give you and the remaining deliberating jurors further instructions of law at that time.

If there is a question or a verdict we will bring you back into court so that you may hear it.

ALTERNATE JUROR EMPANELED AFTER DELIBERATIONS HAVE BEGUN

As you know, Juror # was excused from the jury. An alternate juror has been selected to take (his/her) place. The reason that he/she was excused was entirely personal to him/her; it had nothing to do with his/her views on this case or his/her relationship with the other members of the deliberating jury. Please do not speculate on the reason why that juror was excused.

As of this moment, you are a new jury, and you must start your deliberations over again. The parties have the right to a verdict reached by twelve jurors who have had the full opportunity to deliberate from start to finish. The alternate juror has no knowledge of any earlier deliberations.

Consequently, the new deliberating jury must start over at the very beginning of deliberations. Each member of the original deliberating jury must set aside and disregard whatever may have occurred

and anything which may have been said in the jury room following my instructions to you.

You

must give no weight to any opinion expressed by Juror # during deliberations before that juror was excused. Together, as a new jury, you must consider all evidence presented at trial as part

of your full and complete deliberations until you reach your verdict.

FURTHER JURY DELIBERATIONS¹

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous but do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict. You are not partisans. You are judges--judges of the facts.

1

When you feel a reasonable period of time has gone by subsequent to the delivery of your charge, be aware of N.J.S.A. 2C:1-9d(2).

FORM FOR TAKING A VERDICT AND POLLING JURY

Ms./Mr. Foreperson, please rise.

Ms./Mr. Foreperson, has this jury agreed upon a verdict?

Ms./Mr. Foreperson, is that verdict unanimous?

[THE VERDICT IS THEN RECEIVED AS TO EACH COUNT
AND EACH DEFENDANT.]

Members of this jury, you have heard the verdict as reported by your foreperson, the Court has ordered that each of you now be polled as to your verdict. As your juror number is called, please

answer “yes” if the verdict(s) reported by your foreperson is your verdict(s); please answer “no” if

the verdict(s) reported by your foreperson is not your verdict(s).¹

[AT THE CONCLUSION OF THE POLLING PROCESS, THE CLERK RECORDS
THAT THIS VERDICT [IS/IS NOT] UNANIMOUS.]²

1

See *State v. Milton*, 178 N.J. 421 (2004). Poll is intended to determine the vote of each juror and whether each juror still assents to the verdict. The Court in *Milton* found that “Because the primary purpose of the poll is to reveal coerced decisions, a trial court faced with an uncertain or hesitant juror must elicit a clear response by using measures that afford the juror an opportunity to express freely his or her present state of mind about the verdict.” *Id.* at 438.

2

If the poll discloses that there is not unanimous concurrence, the jury may be directed to retire for further deliberations or be discharged. Rule 1:8-10.