

M Crim JI 3.01

Duties of Judge and Jury

(1) Members of the jury, the evidence and arguments in this case are finished, and I will now instruct you on the law. That is, I will explain the law that applies to this case.

(2) Remember that you have taken an oath to return a true and just verdict, based only on the evidence and my instructions on the law. You must not let sympathy, bias, or prejudice influence your decision. You must avoid reaching conclusions that may have been unintentionally influenced by stereotypes. You must reach your own conclusions about this case individually, but you should do so only after listening to and considering the opinions of the other jurors, who may have different backgrounds and perspectives from yours.

(3) As jurors, you must decide what the facts of this case are. This is your job, and nobody else's. You must think about all the evidence and then decide what each piece of evidence means and how important you think it is. This includes whether you believe what each of the witnesses said. What you decide about any fact in this case is final.

(4) It is my duty to instruct you on the law. You must take the law as I give it to you. If a lawyer says something different about the law, follow what I say. At various times, I have already given you some instructions about the law. You must take all my instructions together as the law you are to follow. You should not pay attention to some instructions and ignore others.

(5) To sum up, it is your job to decide what the facts of the case are, to apply the law as I give it to you, and, in that way, to decide the case.

M Crim JI 3.02

Presumption of Innocence, Burden of Proof, and Reasonable Doubt

- (1) A person accused of a crime is presumed to be innocent. This means that you must start with the presumption that the defendant is innocent. This presumption continues throughout the trial and entitles the defendant to a verdict of not guilty unless you are satisfied beyond a reasonable doubt that **[he / she]** is guilty.

- (2) Every crime is made up of parts called elements. The prosecutor must prove each element of the crime beyond a reasonable doubt. The defendant is not required to prove **[his / her]** innocence or to do anything.* If you find that the prosecutor has not proven every element beyond a reasonable doubt, then you must find the defendant not guilty.

- (3) Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. A reasonable doubt is a fair, honest doubt growing out of the evidence or lack of evidence. It is not merely an imaginary or possible doubt, but a doubt based on reason and common sense. A reasonable doubt is just that: a doubt that is reasonable after a careful and considered examination of the facts and circumstances of this case.

M Crim JI 3.03

Defendant Not Testifying

Every defendant has the absolute right not to testify. When you decide the case, you must not consider the fact that **[he / she]** did not testify. It must not affect your verdict in any way.

M Crim JI 3.05

Evidence

- (1) When you discuss the case and decide on your verdict, you may only consider the evidence that has been properly admitted in this case. Therefore, it is important for you to understand what is evidence and what is not evidence.
- (2) Evidence includes only the sworn testimony of witnesses [**the exhibits admitted into evidence, and anything else I told you to consider as evidence**]¹.
- (3) Many things are not evidence, and you must be careful not to consider them as such. I will now describe some of the things that are not evidence.
- (4) The fact that the defendant is charged with a crime and is on trial is not evidence. [**Likewise, the fact that (he / she) is charged with more than one crime is not evidence.**]
- (5) The lawyers' statements and arguments [**and any commentary**] are not evidence. They are only meant to help you understand the evidence and each side's legal theories. You should only accept things the lawyers say that are supported by the evidence or by your own common sense and general knowledge. The lawyers' questions to the witnesses [**your questions to the witnesses,**] and my questions to the witnesses are also not evidence. You should consider these questions only as they give meaning to the witnesses' answers.
- (6) My comments, rulings, questions, [**summary of the evidence,**] and instructions are also not evidence. It is my duty to see that the trial is conducted according to the law, and to tell you the law that applies to this case. However, when I make a comment or give an instruction, I am not trying to influence your vote or express a personal opinion about the case. If you believe that I have an opinion about how you should decide this case, you must pay no attention to that opinion.

You are the only judges of the facts, and you should decide this case from the evidence.

(7) At times during the trial, I have excluded evidence that was offered or stricken testimony that was heard. Do not consider those things in deciding the case. Make your decision only on the evidence that I let in, and nothing else.

[(8) Your decision should be based on all the evidence, regardless of which party produced it.]²

(9) You should use your own common sense and general knowledge in weighing and judging the evidence, but you should not use any personal knowledge you may have about a place, person, or event. To repeat once more, you must decide this case based only on the evidence admitted during this trial.

M Crim JI 3.06

Witnesses-Credibility

(1) As I said before, it is your job to decide what the facts of this case are. You must decide which witnesses you believe and how important you think their testimony is. You do not have to accept or reject everything a witness said. You are free to believe all, none, or part of any person's testimony.

(2) In deciding which testimony you believe, you should rely on your own common sense and everyday experience. However, in deciding whether you believe a person's testimony, you must set aside any bias or prejudice you may have based on a witness's disability, race, national origin or ethnicity, gender, gender identity or sexual orientation, or religion, age, or socio-economic status.¹ Again, take the time you need to test what might be automatic or instinctive judgments, and to reflect carefully about the evidence.

(3) There is no fixed set of rules for judging whether you believe a witness, but it may help you to think about these questions:

(a) Was the witness able to see or hear clearly? How long was the witness watching or listening? Was anything else going on that might have distracted the witness?

(b) Did the witness seem to have a good memory?

(c) How did the witness look and act while testifying? Did the witness seem to be making an honest effort to tell the truth, or did the witness seem to evade the questions or argue with the lawyers?

(d) Does the witness's age or maturity affect how you judge his or her testimony?

(e) Does the witness have any bias, prejudice, or personal interest in how this case is decided?

(f) Have there been any promises, threats, suggestions, or other influences that affected how the witness testified?

(g) In general, does the witness have any special reason to tell the truth, or any special reason to lie?

(h) All in all, how reasonable does the witness's testimony seem when you think about all the other evidence in the case?

(4) Sometimes the testimony of different witnesses will not agree, and you must decide which testimony you accept. You should think about whether the disagreement involves something important or not, and whether you think someone is lying or is simply mistaken. People see and hear things differently, and witnesses may testify honestly but simply be wrong about what they thought they saw or remembered. It is also a good idea to think about which testimony agrees best with the other evidence in the case.

However, you may conclude that a witness deliberately lied about something that is important to how you decide the case. If so, you may choose not to accept anything that witness said. On the other hand, if you think the witness lied about some things but told the truth about others, you may simply accept the part you think is true and ignore the rest.

M Crim JI 3.10

Time and Place (Venue)

The prosecutor must also prove beyond a reasonable doubt that the crime occurred on or about **[state date alleged]** within _____ County.

M Crim JI 3.11

Deliberations and Verdict

- (1) When you go to the jury room, you will be provided with a written copy **[copies]** of the final jury instructions. **[A copy of electronically recorded instructions will also be provided to you.]** You should first choose a foreperson. The foreperson should see to it that your discussions are carried on in a businesslike way and that everyone has a fair chance to be heard.
- (2) During your deliberations please turn off your cell phones or other communications equipment until we recess.
- (3) A verdict in a criminal case must be unanimous. In order to return a verdict, it is necessary that each of you agrees on that verdict. In the jury room you will discuss the case among yourselves, but ultimately each of you will have to make up your own mind. Any verdict must represent the individual, considered judgment of each juror.
- (4) It is your duty as jurors to talk to each other and make every reasonable effort to reach agreement. Express your opinions and the reasons for them, but keep an open mind as you listen to your fellow jurors. Rethink your opinions and do not hesitate to change your mind if you decide you were wrong. Try your best to work out your differences.
- (5) However, although you should try to reach agreement, none of you should give up your honest opinion about the case just because other jurors disagree with you or just for the sake of reaching a verdict. In the end, your vote must be your own, and you must vote honestly and in good conscience.

[Use the next paragraph when there are less serious included offenses:]

- (6) I have already given you instructions regarding **[a lesser offense / lesser offenses]**. As to any count which includes a lesser offense, you must first consider

the principal offense. If you all agree that the defendant is guilty of that offense, you need not consider the lesser offense(s). If you believe that the defendant is not guilty of the principal offense or if you cannot agree on that offense, you may consider the lesser offense(s). It is up to you to decide how long to consider the principal offense before discussing the lesser offense(s). You may go back to consider the principal offense again after discussing the lesser offense(s), if you want to.

(7) If you have any questions about the jury instructions before you begin deliberations, or questions about the instructions that arise during deliberations, you may submit them in writing in a sealed envelope to the bailiff.

M Crim JI 3.13

Penalty

Possible penalty should not influence your decision. If you find the defendant guilty, it is the duty of the judge to fix the penalty within the limits provided by law.

M Crim JI 3.14

Communications with the Court

(1) If you want to communicate with me while you are in the jury room, please have your foreperson write a note and give it to the bailiff. It is not proper for you to talk directly with the judge, lawyers, court officers, or other people involved in the case.

(2) As you discuss the case, you must not let anyone, even me, know how your voting stands. Therefore, until you return with a unanimous verdict, do not reveal this to anyone outside the jury room.

M Crim JI 3.15

Exhibits

When you go to the jury room to deliberate, you may take **[your notes and]** full instructions. If you want to look at any or all of the reference documents or exhibits that have been admitted, just ask for them.

M Crim JI 3.16

Written or Electronically Recorded Instructions in the Jury Room

When you go to the jury room, you will be given a written copy of the instructions you have just heard. As you discuss the case, you should think about all my instructions together as the law you are to follow.

[Use when an electronically recorded instruction is provided:]

[You will also be given an electronically recorded copy of the instructions you have just heard.]

M Crim JI 3.20

Single Defendant-Multiple Counts-More Than One Wrongful Act

(1) The defendant is charged with counts, that is, with the crimes of _____ and _____. These are separate crimes, and the prosecutor is charging that the defendant committed both of them. You must consider each crime separately in light of all the evidence in the case.

(2) You may find the defendant guilty of all or **[any one / any combination]** of these crimes **[, guilty of a less serious crime,]** or not guilty.

M Crim JI 4.03

Circumstantial Evidence

(1) Facts can be proved by direct evidence from a witness or an exhibit. Direct evidence is evidence about what we actually see or hear. For example, if you look outside and see rain falling, that is direct evidence that it is raining.

(2) Facts can also be proved by indirect, or circumstantial, evidence. Circumstantial evidence is evidence that normally or reasonably leads to other facts. So, for example, if you see a person come in from outside wearing a raincoat covered with small drops of water that would be circumstantial evidence that it is raining.

(3) You may consider circumstantial evidence. Circumstantial evidence by itself, or a combination of circumstantial evidence and direct evidence, can be used to prove the elements of a crime. In other words, you should consider all the evidence that you believe.

M Crim JI 4.1

Defendant's Statements As Evidence Against the Defendant

(1) The prosecution has introduced evidence of a statement¹ that it claims the defendant made.

(2) Before you may consider such an out-of-court statement against the defendant, you must first find that the defendant actually made the statement as given to you.

(3) If you find that the defendant did make the statement, you may give the statement whatever weight you think it deserves. In deciding this, you should think about how and when the statement was made, and about all the other evidence in the case. You may consider the statement in deciding the facts of the case **[and in deciding if you believe the defendant's testimony in court].**²

M Crim JI 4.5

Prior Inconsistent Statement Used to Impeach Witness

You have heard evidence that, before the trial, **[a witness / witnesses]** made **[a statement / statements]** that may be inconsistent with **[his / her / their]** testimony here in court.

(1) You may consider an inconsistent statement made before the trial **[only]**¹ to help you decide how believable the **[witness' / witnesses']** testimony was when testifying here in court.

(2) If the earlier statement was made under oath, then you may also consider the earlier statement as evidence of the truth of whatever the **[witness / witnesses]** said in the earlier **[statement / statements]** when determining the facts of this case.²

M Crim JI 4.7

Stipulation

When the lawyers agree on a statement of facts, these are called stipulated facts.

You may regard such stipulated facts as true, but you are not required to do so.

M Crim JI 4.9

Motive

(1) You may consider whether the defendant had a reason to commit the alleged crime, but a reason, by itself, is not enough to find a person guilty of a crime.

(2) The prosecutor does not have to prove that the defendant had a reason to commit the alleged crime. **[He / she]** only has to show that the defendant actually committed the crime **[and that (he / she) meant to do so]**.

M Crim JI 4.16

Intent

The defendant's intent may be proved by what **[he / she]** said, what **[he / she]** did, how **[he / she]** did it, or by any other facts and circumstances in evidence.

M Crim JI 5.02

Weighing Conflicting Evidence-Number of Witnesses

You should not decide this case based on which side presented more witnesses. Instead, you should think about each witness and each piece of evidence and whether you believe them. Then you must decide whether the testimony and evidence you believe proves beyond a reasonable doubt that the defendant is guilty.

M Crim JI 5.3

Witness Who Has Been Interviewed by a Lawyer

You have heard that a lawyer **[or lawyer's representative]** talked to one of the witnesses. There is nothing wrong with this. A lawyer **[or lawyer's representative]** may talk to a witness to find out what the witness knows about the case and what the witness's testimony will be.

M Crim JI 5.10

Expert Witness

(1) You have heard testimony from a witness, _____, who has given you **[his / her]** opinion as an expert in the field of _____.

Experts are allowed to give opinions in court about matters they are experts on.

(2) However, you do not have to believe an expert's opinion. Instead, you should decide whether you believe it and how important you think it is. When you decide whether you believe an expert's opinion, think carefully about the reasons and facts **[he / she]** gave for **[his / her]** opinion, and whether those facts are true. You should also think about the expert's qualifications, and whether **[his / her]** opinion makes sense when you think about the other evidence in the case.

M Crim JI 5.11

Police Witness

You have heard testimony from **[a witness who is a police officer / witnesses who are police officers]**. That testimony is to be judged by the same standards you use to evaluate the testimony of any other witness.

M Crim JI 11.34

Possession of Firearm at Time of Commission or Attempted Commission of Felony (Felony Firearm)

(1) The defendant is also charged with the separate crime of possessing a firearm at the time **[he / she]** committed **[or attempted to commit]**¹ the crime of _____.

(2) To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(3) First, that the defendant committed **[or attempted to commit]** the crime of _____, which has been defined for you. It is not necessary, however, that the defendant be convicted of that crime.

(4) Second, that at the time the defendant committed **[or attempted to commit]** that crime **[he / she]** knowingly carried or possessed a firearm.

[Use any of the following paragraphs when factually appropriate:]

[(5) This charge includes possession of a firearm during either a completed crime or an attempted crime. An attempt has two elements. First, the defendant must have intended to commit the crime of _____ . Second, the defendant must have taken some action toward committing the alleged crime, but failed to complete the crime. It is not enough to prove that the defendant made preparations for committing the crime. Things like planning the crime or arranging how it will be committed are just preparations; they do not qualify as an attempt. In order to qualify as an attempt, the action must go beyond mere preparation, to the point where the crime would have been completed if it had not been interrupted by outside circumstances. To qualify as an attempt, the act must clearly and directly be related to the crime the defendant is charged with attempting and not some other objective.]²

[(6) It does not matter whether or not the firearm was capable of firing a projectile or whether it was loaded.]

[(7) A firearm includes any weapon which will, or is designed to, or may readily be converted to expel a projectile by action of an explosive.]³

[(8) A pistol is a firearm.]

M Crim JI 11.34a

Using Pneumatic Gun in Furtherance of Commission or Attempted Commission of Felony (Felony Firearm)

(1) The defendant is also charged with the separate crime of using a pneumatic gun while committing **[or attempting to commit]**¹ the crime of _____.

(2) To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(3) First, that the defendant committed **[or attempted to commit]** the crime of _____, which has been defined for you. It is not necessary, however, that the defendant be convicted of that crime.

(4) Second, that at the time the defendant committed **[or attempted to commit]** that crime **[he / she]** used a pneumatic gun to further the commission of **[or attempt to commit]** that crime. A pneumatic gun is any implement, designed as a gun, that will expel a BB or pellet by spring, gas, or air **[such as a paintball gun that expels by gas or air pressure plastic balls filled with paint for the purpose of marking the point of impact]**.

[Use any of the following paragraphs when factually appropriate:]

[(5) This charge includes use of a pneumatic gun in furtherance of either a completed crime or an attempted crime. An attempt has two elements. First, the defendant must have intended to commit the crime of _____ . Second, the defendant must have taken some action toward committing the alleged crime, but failed to complete the crime. It is not enough to prove that the defendant made preparations for committing the crime. Things like planning the crime or arranging how it will be committed are just preparations; they do not qualify as an attempt. In order to qualify as an attempt, the action must go beyond mere preparation, to the point where

the crime would have been completed if it had not been interrupted by outside circumstances. To qualify as an attempt, the act must clearly and directly be related to the crime the defendant is charged with attempting and not some other objective.]²

[(6) It does not matter whether or not the pneumatic gun was capable of firing a projectile or whether it was loaded.]

M Crim JI 12.3

Unlawful Possession of a Controlled Substance with Intent to Deliver

(1) The defendant is charged with the crime of illegally possessing with intent to deliver **[state weight]** of a **[mixture containing a]** controlled substance. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant possessed¹ **[identify controlled substance]**.

(3) Second, that the defendant knew that **[he / she]** possessed a controlled substance.

(4) Third, that the defendant intended to deliver the controlled substance to someone else.

(5) **[Fourth, that the controlled substance that the defendant intended to deliver [was in a mixture that] weighed (state weight).]**²

M Crim JI 12.7

Meaning of Possession

Possession does not necessarily mean ownership. Possession means that either:

- (1) the person has actual physical control of the **[substance / thing]**, as I do with the pen I'm now holding, or
- (2) the person has the right to control the **[substance / thing]**, even though it is in a different room or place.

Possession may be sole, where one person alone possesses the **[substance / thing]**.

Possession may be joint, where two or more people each share possession.

It is not enough if the defendant merely knew about the **[state substance or thing]**; the defendant possessed the **[state substance or thing]** only if **[he / she]** had control of it or the right to control it, either alone or together with someone else.

M Crim JI 13.1

Assaulting, Resisting, or Obstructing a Police Officer or Person Performing Duties

(1) The defendant is charged with the crime of assaulting, battering, wounding, resisting, obstructing, opposing, or endangering¹ a **[police officer / (state authorized person)²** who was performing **[his / her]** duties. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered¹ **[name complainant]**, who was a **[police officer / (state authorized person)]**. **["Obstruct" includes the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command.]³ [The defendant must have actually resisted by what (he / she) said or did, but physical violence is not necessary.]⁴**

(3) Second, that the defendant knew or had reason to know that **[name complainant]** was a **[police officer / (state authorized person)]** performing **[his / her]** duties at the time.

(4) Third, that **[name complainant]** gave the defendant a lawful command, was making a lawful arrest, or was otherwise performing a lawful act. **[Provide detailed legal instructions regarding the applicable law governing the officer's or official's legal authority to act.]⁵**

[Use the following paragraphs as warranted by the charge and proofs:]

(5) Fourth, that the defendant's act in assaulting, battering, wounding, resisting, obstructing, opposing, or endangering¹ a **[police officer / (state authorized person)]** caused the death of **[name complainant]**.

(6) Fourth, that the defendant's act in assaulting, battering, wounding, resisting, obstructing, opposing, or endangering¹ a **[police officer / (state authorized person)]** caused **[name complainant]** to suffer serious impairment of a body function.⁶

(7) Fourth, that the defendant's act in assaulting, battering, wounding, resisting, obstructing, opposing, or endangering¹ a **[police officer / (state authorized person)]** caused a bodily injury requiring medical attention or medical care to **[name complainant]**.