JURY INSTRUCTIONS

101.05 FUNCTION OF THE JURY

Members of the jury: All of the evidence has been presented. It is now your duty to decide from this evidence what the facts are. You must then apply the law which I am about to give you to those facts. It is absolutely necessary that you understand and apply the law as I give it to you, and not as you think it is, or as you might like it to be. This is important because justice requires that everyone tried for the same crime be treated in the same way and have the same law applied.

101.10 BURDEN OF PROOF AND REASONABLE DOUBT

The defendant has entered a plea of "not guilty." The fact that the defendant has been charged is no evidence of guilt. Under our system of justice, when a defendant pleads "not guilty," the defendant is not required to prove the defendant's innocence; the defendant is presumed to be innocent. The State must prove to you that the defendant is guilty beyond a reasonable doubt.

A reasonable doubt is a doubt based on reason and common sense, arising out of some or all of the evidence that has been presented, or lack or insufficiency of the evidence, as the case may be. Proof beyond a reasonable doubt is proof that fully satisfies or entirely convinces you of the defendant's guilt.

101.15 CREDIBILITY OF WITNESS

You are the sole judges of the believability of a witness.

You must decide for yourselves whether to believe the testimony of any witness. You may believe all, any part, or none of a witness's testimony.

In deciding whether to believe a witness you should use the same tests of truthfulness that you use in your everyday lives. Among other things, these tests may include: the opportunity of the witness to see, hear, know, or

remember the facts or occurrences about which the witness testified; the manner and appearance of the witness; any interest, bias, prejudice or partiality the witness may have; the apparent understanding and fairness of the witness; whether the testimony is reasonable; and whether the testimony is consistent with other believable evidence in the case.

101.20 WEIGHT OF THE EVIDENCE

You are the sole judges of the weight to be given any evidence. If you decide that certain evidence is believable you must then determine the importance of that evidence in light of all other believable evidence in the case.

101.25 DUTY TO ABIDE BY TRANSLATION PROVIDED IN COURT

Some testimony may have been given in Spanish. An interpreter will provide a translation for you at the time that the testimony is given. You must rely on the translation provided by the interpreter. Do not retranslate any testimony for other jurors. If you believe that the court interpreter translated testimony incorrectly, it is your duty to immediately notify the bailiff or the court.

101.30 EFFECT OF THE DEFENDANT'S DECISION NOT TO TESTIFY.

The defendant in this case has not testified. The law gives the defendant this privilege. This same law also assures the defendant that this decision not to testify creates no presumption against the defendant. Therefore, the silence of the defendant is not to influence your decision in any way.

104.05 CIRCUMSTANTIAL EVIDENCE

There are two types of evidence from which you may find the truth as to the facts of a case - direct and circumstantial evidence. Direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eye-witness; circumstantial evidence is proof of a chain or group of facts and circumstances indicating the guilt or innocence of a defendant. The law makes no distinction between the weight to be given to either direct or circumstantial

evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

104.20 TESTIMONY OF INTERESTED WITNESS.

You may find that a witness is interested in the outcome of this trial. You may take the witness's interest into account in deciding whether to believe the witness. If you believe the testimony of the witness in whole or in part, you should treat what you believe the same as any other believable evidence.

104.50 PHOTOGRAPHS, DIAGRAMS, MAPS – AS ILLUSTRATIVE EVIDENCE.

Photographs, diagrams, and maps were introduced into evidence in this case for the purpose of illustrating and explaining the testimony of witnesses. These photographs, diagrams, and maps, may not be considered by you for any other purpose.

104.50A PHOTOGRAPHS, VIDEOS, ETC. – AS SUBSTANTIVE EVIDENCE.

Photographs and videos were introduced into evidence in this case. These photographs and videos may be considered by you as evidence of facts they illustrate or show.

104.90 IDENTIFICATION OF A DEFENDANT AS PERPETRATOR OF A CRIME.

I instruct you that the State has the burden of proving the identity of the defendant as the perpetrator of the crimes charged beyond a reasonable doubt. This means that you, the jury, must be satisfied beyond a reasonable doubt that the defendant was the perpetrator of the crime charged before you may return a verdict of guilty.

104.94 TESTIMONY OF EXPERT WITNESS.

In this case you have heard evidence from witnesses who have testified as expert witnesses. An expert witness is permitted to testify in the form of an opinion in a field where the witness purports to have specialized skill or knowledge.

As I have instructed you, you are the sole judges of the credibility of each witness and the weight to be given to the testimony of each witness. In making this determination as to the testimony of an expert witness, you should consider, in addition to the other tests of credibility and weight, the witness's training, qualifications, and experience or lack thereof; the reasons, if any, given for the opinion; whether the opinion is supported by facts that you find from the evidence; whether the opinion is reasonable; and whether it is consistent with other believable evidence in the case.

You should consider the opinion of an expert witness, but you are not bound by it. In other words, you are not required to accept an expert witness's opinion to the exclusion of the facts and circumstances disclosed by other testimony.

104.95 OPINION TESTIMONY BY LAY WITNESS.

Evidence has been received from a witness in the form of an opinion. You may only consider the opinion of a witness that is rationally based on the perception of the witness and helpful to a clear understanding of the witness's testimony or the determination of a fact in issue.

105.20 IMPEACHMENT OR CORROBORATION BY PRIOR STATEMENT.

Evidence has been received tending to show that at an earlier time a witness made a statement which may conflict or be consistent with the testimony of the witness at this trial. You must not consider such earlier statement as evidence of the truth of what was said at that earlier time because it was not

made under oath at this trial. If you believe the earlier statement was made, and that it conflicts or is consistent with the testimony of the witness at this trial, you may consider this, and all other facts and circumstances bearing upon the witness's truthfulness, in deciding whether you will believe or disbelieve the witness's testimony.

120.10 DEFINITION OF INTENT

Intent is a mental attitude seldom provable by direct evidence. It must ordinarily be proved by circumstances from which it may be inferred. You arrive at the intent of a person by such just and reasonable deductions from the circumstances proven as a reasonably prudent person would ordinarily draw therefrom. Specific intent is a mental purpose, aim or design to accomplish a specific harm or result.

100.30 MAKING NOTES BY JURORS

As you will recall, in my discretion, I have allowed you to take notes in this case. In accordance with my earlier instructions to you, I instruct you as follows:

In your deliberations, you may use your notes as a reference to aid you or assist you in refreshing your memory as to the evidence presented in this trial.

I caution you, however, and remind you not to give your notes or the notes of any other juror undue significance in your deliberations.

You are to consider all of the evidence presented to you, whether or not you or any other juror made notes as to some or all of the evidence presented.

Remember, that neither your notes nor the notes of any other juror are to be considered evidence in this case. Notes of a juror are not an official transcript or record of the evidence in this case.

Your notes are only to assist your memory and the notes of any juror or jurors, are not entitled to any greater weight than the notes of other jurors or the individual recollections of the jurors whether recorded or unrecorded by note-taking.

206.14 FIRST DEGREE MURDER – MURDER COMMITTED IN PERPETRATION OF A FELONY OR MURDER WITH PREMEDITATION AND DELIBERATION WHERE A DEADLY WEAPON IS USED.

The defendant has been charged with first degree murder.

Under the law and the evidence in this case, it is your duty to return one of the following verdicts:

(1) Guilty of first degree murder

(2) Guilty of second degree murder,

(3) Not guilty.

You may find the defendant guilty of first degree murder either on the basis of malice, premeditation and deliberation, or under the first degree felony murder rule, or both. First degree murder on the basis of malice, premeditation and deliberation is the intentional and unlawful killing of a human being with malice and with premeditation and deliberation. First degree murder under the first degree felony murder rule is the killing of a human being in the [perpetration of] [rape] or [sexual offense].

For you to find the defendant guilty of first degree murder on the basis of malice, premeditation and deliberation, the State must prove five things beyond a reasonable doubt:

First, that the defendant intentionally and with malice killed the alleged victim with a deadly weapon.

Malice means not only hatred, ill will, or spite, as it is ordinarily understood to be sure, that is malice but it also means that condition of mind that prompts a person to take the life of another intentionally or to intentionally inflict a

wound with a deadly weapon upon another which proximately results in her death, without just cause, excuse or justification. If the State proves beyond a reasonable doubt, that the defendant intentionally killed the alleged victim with a deadly weapon or intentionally inflicted a wound upon the alleged victim with a deadly weapon that proximately caused the person's death, you may infer first, that the killing was unlawful, and second, that it was done with malice, but you are not compelled to do so. You may consider the inference along with all other facts and circumstances in determining whether the killing was unlawful and whether it was done with malice.

[A deadly weapon is a weapon which is likely to cause death or serious injury. In determining whether the instrument was a deadly weapon, you should consider its nature, the manner in which it was used, and the size and strength of the defendant as compared to the alleged victim.]

Second, the State must prove that the defendant's act was a proximate cause of the alleged victim's death. A proximate cause is a real cause, a cause without which the alleged victim's death would not have occurred, and one that a reasonably careful and prudent person could foresee would probably produce such [injury] or some similar injurious result.

Third, that the defendant intended to kill the alleged victim. Intent is a mental attitude seldom provable by direct evidence. It must ordinarily be proved by circumstances from which it may be inferred. An intent to kill may be inferred from the nature of the assault, the manner in which it was made, the conduct of the parties and other relevant circumstances.

Fourth, that the defendant acted after premeditation, that is, that the defendant formed the intent to kill the alleged victim over some period of time, however short, before the defendant acted.

And fifth, that the defendant acted with deliberation, which means that the defendant acted while the defendant was in a cool state of mind. This does

not mean that there had to be a total absence of passion or emotion. If the intent to kill was formed with a fixed purpose, not under the influence of some suddenly aroused violent passion, it is immaterial that the defendant was in a state of passion or excited when the intent was carried into effect.

Neither premeditation nor deliberation is usually susceptible of direct proof. They may be proved by proof of circumstances from which they may be inferred, such as the [lack of provocation by the alleged victim] or [use of grossly excessive force] or [infliction of lethal wounds after the alleged victim is felled] or [brutal or vicious circumstances of the killing] or [manner in which or means by which the killing was done].

I further charge that for you to find the defendant guilty of first degree murder under the first degree felony murder rule, the State must prove [three] things beyond a reasonable doubt:

First, that the defendant [committed] (first degree rape or first degree sexual offense).

First degree Rape is:

> *First*, that the defendant engaged in vaginal intercourse with the alleged victim. Vaginal intercourse is penetration, however slight, of the female sex organ by the male sex organ. (The actual emission of semen is not necessary.)
>
> *Second*, that the defendant used or threatened to use force sufficient to overcome any resistance the alleged victim might make.
>
> *Third*, that the alleged victim did not consent and it was against the alleged victim's will.
>
> *And fourth*, that the defendant [employed] [a dangerous weapon or object. A dangerous or deadly weapon is a weapon which is likely to cause death or serious bodily injury. In determining whether a particular

object is a dangerous or deadly weapon, you should consider its nature, the manner in which it was used and the size and strength of the defendant as compared to the alleged victim.];

or

[inflicted serious personal injury upon the alleged victim.]

OR

First Degree Sexual Offense is:

First, that the defendant engaged in a sexual act with the alleged victim. A sexual act means [anal intercourse, which is any penetration, however slight, of the anus of any person by the male sexual organ of another.]

Second, that the defendant used or threatened to use force sufficient to overcome any resistance the alleged victim might make.

Third, that the alleged victim did not consent and it was against the alleged victim's will.

And fourth, that the defendant [employed] [a dangerous or deadly weapon.] [A dangerous or deadly weapon is a weapon which is likely to cause death or serious bodily injury. In determining whether the particular object is a dangerous or deadly weapon, you should consider the nature of the object, the manner in which it was used, and the size and strength of the defendant as compared to the alleged victim.

Or [inflicted serious personal injury upon the [the alleged victim]

Second, that while [committing] (first degree rape or first degree sexual offense), the defendant killed the alleged victim with a deadly weapon.

And third, that the defendant's act was a proximate cause of the alleged victim's death. A proximate cause is a real cause, a cause without which the alleged victim's death would not have occurred.

FINAL MANDATE

If you find from the evidence beyond a reasonable doubt that on or about September 7th, 2012, the defendant, acting with malice, killed the alleged victim with a deadly weapon thereby proximately causing the alleged victim's death, that the defendant intended to kill the alleged victim, and that the defendant acted after premeditation and with deliberation, it would be your duty to return a verdict of guilty of first degree murder on the basis of malice, premeditation and deliberation. If you do not so find or have a reasonable doubt as to one or more of these things, you would not return a verdict of guilty of first degree murder on the basis of malice, premeditation and deliberation.

Whether or not you find the defendant guilty of first degree murder on the basis of malice, premeditation and deliberation, you will also consider whether the defendant is guilty of first degree murder under the first degree felony murder rule.

If you find from the evidence beyond a reasonable doubt that on or about September 7th, 2012, the defendant engaged in vaginal intercourse with the alleged victim and that the defendant did so by force or threat of force and that this was sufficient to overcome any resistance which the alleged victim might make, and that the alleged victim did not consent and it was against the alleged victim's will, and that the defendant

[employed] a [weapon] or [object] (and that this was a dangerous or deadly weapon).]; or

[inflicted serious personal injury upon [the alleged victim]

And that while [committing] (First degree Rape), the defendant killed the alleged victim and that the defendant's act was a proximate cause of the

alleged victim's death, it would be your duty to return a verdict of guilty of first degree murder under the felony murder rule.

OR

If you find from the evidence beyond a reasonable doubt that on or about September 7th, 2012, the defendant engaged in a sexual act with the alleged victim and that the defendant did so by [force] or [threat of force] and that this was sufficient to overcome any resistance which the alleged victim might make, that the alleged victim did not consent and it was against the alleged victim's will, and that the defendant

[employed] a [weapon] or [an object] (and that [this was] a dangerous or deadly weapon.] or

[inflicted serious personal injury upon [the alleged victim].

and that while [committing] (First degree Sex Offense), the defendant killed the alleged victim and that the defendant's act was a proximate cause of the alleged victim's death, it would be your duty to return a verdict of guilty of first degree murder under the felony murder rule.

If you do not so find, or have a reasonable doubt as to one or more of these things, you will not return a verdict of guilty of first degree murder under the felony murder rule.

If you do not find the defendant guilty of first degree murder on the **basis of** malice, premeditation and deliberation, and if you do not find the defendant guilty of first degree murder under the felony murder rule, you must determine whether the defendant is guilty of second degree murder.

Second degree murder is the unlawful killing of a human being with malice but without premeditation and deliberation.

Second degree murder differs from first degree murder in that the State need not prove a specific intent to kill, premeditation, deliberation or that the killing was committed in the perpetration of a felony. In order for you to find the defendant guilty of second degree murder, the State must prove beyond a reasonable doubt that the defendant intentionally and with malice wounded the alleged victim (with a deadly weapon) thereby proximately causing the alleged victim's death.

If the State proves beyond a reasonable doubt that the defendant intentionally inflicted a wound upon the alleged victim (with a deadly weapon) that proximately caused the alleged victim's death, you may infer first, that the killing was unlawful, and second, that it was done with malice, but you are not compelled to do so. You may consider the inferences along with all other facts and circumstances in determining whether the killing was unlawful and whether it was done with malice. If the killing was unlawful and was done with malice, the defendant would be guilty of second degree murder.

If you find from the evidence beyond a reasonable doubt that on or about, September 7th, 2012, the defendant intentionally and with malice (and without justification or excuse) wounded the alleged victim with a deadly weapon and that this proximately caused the alleged victim's death, it would be your duty to return a verdict of guilty of second degree murder. If you do not so find or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

214.10 FIRST DEGREE BURGLARY.

The defendant has been charged with first degree burglary, which is breaking and entering in the nighttime of another person's occupied [room used as a sleeping apartment] or a [dwelling house] without that person's consent, and with the intent to commit (First-degree murder, or First-degree Rape, or First Degree Sexual Offense).

For you to find the defendant guilty of this offense, the State must prove five things beyond a reasonable doubt:

First, that the defendant broke and entered a [dwelling house] or [sleeping apartment].

Second, that the breaking and entering was during the nighttime. ✓

Third, that at the time of the breaking and entering the [dwelling house] or [sleeping apartment] was occupied. ✓

Fourth, that the [tenant] did not consent to the breaking and entering.

And fifth, that at the time of the breaking and entering the defendant intended to commit (First degree Murder or First degree Rape or First Degree Sex Offense....the elements for First degree Murder, First degree Rape, and First degree Sex Offense are the same as described above) within the [dwelling house] or [sleeping apartment].

If you find from the evidence beyond a reasonable doubt that on or about September 7th, 2012, the defendant broke into and entered an occupied [dwelling house] or [sleeping apartment] without the [tenant's] consent, during the nighttime, and at that time intended to commit (First-degree murder, or First-degree Rape, or First-degree sexual offense) therein, it would be your duty to return a verdict of guilty of first degree burglary. If you do not so find or have a reasonable doubt as to one or more of these things, you will return a verdict of not guilty.

207.10 FIRST DEGREE RAPE (WEAPON, OR SERIOUS INJURY) (OFFENSES PRIOR TO DEC. 1, 2015) FELONY.

The defendant has been charged with first degree rape.

Under the law and the evidence in this case, it is your duty to return one of the following verdicts:

guilty of first degree rape;

or not guilty.

For you to find the defendant guilty of first degree rape, the State must prove four things beyond a reasonable doubt:

First, that the defendant engaged in vaginal intercourse with the alleged victim. Vaginal intercourse is penetration, however slight, of the female sex organ by the male sex organ. (The actual emission of semen is not necessary.)

Second, that the defendant used or threatened to use force sufficient to overcome any resistance the alleged victim might make.

Third, that the alleged victim did not consent and it was against the alleged victim's will.

And fourth, that the defendant [employed] [A dangerous weapon or object A dangerous or deadly weapon is a weapon which is likely to cause death or serious bodily injury. In determining whether a particular object is a dangerous or deadly weapon, you should consider its nature, the manner in which it was used and the size and strength of the defendant as compared to the alleged victim.];

or

[inflicted serious personal injury upon the alleged victim.];

If you find from the evidence beyond a reasonable doubt that on or about September 7th, 2012, the defendant engaged in vaginal intercourse with the

alleged victim and that the defendant did so by force or threat of force and that this was sufficient to overcome any resistance which the alleged victim might make, and that the alleged victim did not consent and it was against the alleged victim's will, and that the defendant

[[employed] a [weapon] or [object] (and that this was a dangerous or deadly weapon).]; or

[inflicted serious personal injury upon [the alleged victim]

it would be your duty to return a verdict of guilty of first degree rape. If you do not so find or if you have a reasonable doubt as to one or more of these things, you will return a verdict of not guilty.

207.40 FIRST DEGREE SEXUAL OFFENSE – WEAPON OR SERIOUS INJURY (OFFENSES PRIOR TO DEC. 1, 2015) FELONY.

The defendant has been charged with first degree sexual offense.

For you to find the defendant guilty of first degree sexual offense, the State must prove four things beyond a reasonable doubt:

First, that the defendant engaged in a sexual act with the alleged victim. A sexual act means

[anal intercourse, which is any penetration, however slight, of the anus of any person by the male sexual organ of another.]

Second, that the defendant used or threatened to use force sufficient to overcome any resistance the alleged victim might make.

Third, that the alleged victim did not consent and it was against the alleged victim's will.

And fourth, that the defendant

[[employed] [a dangerous or deadly weapon.] [A dangerous or deadly weapon is a weapon which is likely to cause death or serious bodily injury. In determining whether the particular object is a dangerous or deadly weapon, you should consider the nature of the object, the manner in which it was used, and the size and strength of the defendant as compared to the alleged victim.

Or [inflicted serious personal injury upon the [the alleged victim]

If you find from the evidence beyond a reasonable doubt that on or about September 7th, 2012, the defendant engaged in a sexual act with the alleged victim and that the defendant did so by [force] or [threat of force] and that this was sufficient to overcome any resistance which the alleged victim might make, that the alleged victim did not consent and it was against the alleged victim's will, and that the defendant

[employed] a [weapon] or [an object] (and that [this was] a dangerous or deadly weapon.] or

[inflicted serious personal injury upon [the alleged victim].

it would be your duty to return a verdict of guilty of first degree sexual offense. If you do not so find or have a reasonable doubt as to one or more of these things, you would not return a verdict of guilty.

101.35 CONCLUDING INSTRUCTIONS – JURY CONSIDER ALL EVIDENCE, JUDGE NOT EXPRESS OPINION, UNANIMOUS VERDICT, SELECTION OF FOREPERSON

Members of the jury, you have heard the evidence and the arguments of counsel. If your recollection of the evidence differs from that of the attorneys, you are to rely solely upon your recollection. Your duty is to remember the evidence whether called to your attention or not.

You should consider all the evidence, the arguments, contentions and positions urged by the attorneys, and any other contention that arises from the evidence.

The law requires the presiding judge to be impartial. You should not infer from anything I have done or said that the evidence is to be believed or disbelieved, that a fact has been proved or what your findings ought to be. It is your duty to find the facts and to render a verdict reflecting the truth. All twelve of you must agree to your verdict. You cannot reach a verdict by majority vote.

When you have agreed upon a unanimous verdict as to the charge your foreperson should so indicate on the verdict form.

After reaching the jury room your first order of business is to select your foreperson. You may begin your deliberations when the deputy delivers the verdict form to you. Your foreperson should lead the deliberations. When you have unanimously agreed upon a verdict as to the charge and are ready to announce it your foreperson should record your verdict, sign and date the verdict form, and notify the deputy by knocking on the jury room door or otherwise summoning the deputy. You will be returned to the courtroom and your verdict will be announced.

Thank you. You may retire and select your foreperson.