

INSTRUCTIONS THE COURT WILL GIVE IN *PEOPLE V. ZELLER*

I

PRELIMINARY INSTRUCTIONS BEFORE TRIAL

Members of the Jury:

Before we begin, I will explain how the trial will proceed, and what each participant's role in the trial will be -- you, the lawyers for both sides, and myself. At the end of the trial I will give you more detailed guidance on how you are to go about reaching your decision. But for now I simply want to explain how the trial will proceed.

This criminal case has been brought by the People of the State of Marshall. I will sometimes refer to the People as the prosecution. The People are represented here by Mr./Ms. _____ and Mr./Ms. _____. The defendant, Martin Zeller, is represented by lawyers, Mr./Ms. _____ and Mr./Ms. _____.

The defendant has been charged by the prosecution with two offenses: Attempted Murder and Aggravated Battery. These charges against the defendant are contained in what is known as the indictment. The indictment is not evidence of anything, but rather is simply the description of the charges brought by the prosecution against the defendant. The defendant has pleaded not guilty to the charges; that is, he denies committing the offenses I spoke of before. The defendant is presumed innocent and may not be found guilty of a charge by you unless all twelve of you unanimously find that the prosecution has proved his guilt as to that charge beyond a reasonable doubt.

The first step in the trial will be the opening statements, to be given by each side. Just as the indictment is not evidence, neither is the opening statement evidence. Its purpose is only to help you understand what the evidence will be and what the prosecution will try to prove. The prosecution in its opening statement will tell you about the evidence which it intends to put before you, so that you will have an idea of what the prosecution's case is going to be.

After the prosecution's opening statement, the defendant's attorney will make an opening statement. At this point in the trial, no evidence has been offered by either side.

Next the prosecution will offer evidence that it says will support the charge against the defendant. The prosecution's evidence in this case will consist of the testimony of witnesses as well as exhibits. Some of you have probably heard the terms "circumstantial evidence" and "direct evidence." Do not be concerned with these terms. You are to consider all the evidence given in this trial.

After the prosecution's evidence, the defendant's lawyer may present evidence on the defendant's behalf, but is not required to do so. I remind you that the defendant is presumed innocent and it is the prosecution's burden to prove the defendant's guilt beyond a reasonable doubt, and that burden remains with the prosecution throughout the trial. The defendant does not have to prove anything.

After you have heard all the evidence, the prosecution and the defense will each be given time for their final arguments. I just told you that the opening statements by the lawyers are not evidence. The same applies to the closing arguments. They are not evidence either. In their closing arguments the lawyers for the prosecution and the defense will be attempting to summarize their cases and help you understand the

evidence that was presented.

The final part of the trial occurs when I instruct you about the rules of law which you are to use in reaching your verdict. After hearing my instructions, you will leave the courtroom together to make your decision. Your deliberations will be secret. You will never have to explain your verdict to anyone.

You should not form any definite or fixed opinion on the merits of the case until you have heard all the evidence, the argument of the lawyers, and the instructions on the law by the judge. Until that time you should not discuss the case among yourselves.

The case must be tried by you only on the evidence presented during the trial in your presence and in the presence of the defendant, the attorneys, and the judge. You must not discuss this case with anyone and you must not speak with the attorneys, the witnesses, or the defendant about any subject until your deliberations are finished.

Now that I have described the trial itself, let me explain the roles that each of us has to perform during the trial. It is the judge's duty to determine which rules of law apply to this case. This determination is made after consultations with the lawyers for both sides. These rules will be given to you during the trial in response to questions raised by the attorneys and in the final instructions I will give to you after the evidence and arguments are completed. You will decide whether the prosecution has proved, beyond a reasonable doubt, that the defendant has committed the offense of possession with intent to deliver. You must base that decision only on the evidence in the case and my instructions about the law.

If you find the defendant guilty, it will then be my job to decide what punishment should be imposed. In considering the evidence and arguments that will be given during the trial, you should not guess about the punishment. It should not enter into your consideration or discussions at any time.

At times during the trial, a lawyer may make an objection to a question asked by another lawyer, or to an answer given by a witness. This simply means that the lawyer is requesting that I make a decision on a particular rule of law. Do not draw any conclusion from such objections, as it is the lawyer's duty to make objections deemed appropriate, nor should you draw any conclusions from my rulings on the objections. These only relate to the legal questions that I must determine and should not influence your thinking. If I sustain an objection to a question, the witness may not answer it. Do not attempt to guess what answer might have been given had I allowed the question to be answered. Similarly, if I tell you not to consider a particular statement, you should put that statement out of your mind, and you may not refer to that statement in your later deliberations.

Finally, let me clarify something you may wonder about later. During the course of the trial I may have to interrupt the proceedings to confer with the attorneys about the particular rules of law which should apply here. Sometimes we will talk here, at the bench. But some of these conferences may take time. So, as a convenience to you, I will excuse you from the courtroom. I will try to avoid such interruptions as much as possible, but please be patient even if the trial seems to be moving slowly because conferences often save time for all of us.

Now we will begin the trial, and I thank you for your attention.

II

INSTRUCTIONS AT THE END OF TRIAL

Members of the Jury:

You will soon leave the courtroom and begin your deliberations and discussions about this case.

It is your duty to determine the facts from the evidence in this case. You are apply the law given to you in these instructions to the facts and in this way decide the case.

It is your duty to follow all of the instructions as given by me. You must not question any rule of law stated by me in these instructions. Regardless of any opinion you may have as to what the law ought to be, you must base your verdict upon the law given by me.

It is your job to decide if the prosecution has proven the guilt of the defendant beyond a reasonable doubt. An important part of that job will be making judgments about the testimony of the witnesses [--including the defendant--] who testified in this case. You are the sole judges of the credibility of the witnesses, and of the weight to be given to the testimony of each of them.

In considering the testimony of any witness, you may take into account that witness's intelligence, ability to observe, opportunity to observe, age, memory, manner while testifying, any interest, bias or prejudice the witness may have, and the reasonableness of the witness's testimony considered in the light of all the evidence in the case.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

You should decide whether you believe what each person had to say, and how important that testimony was. In making that decision I suggest that you ask yourself a few questions: Did the person impress you as honest? Did he or she have any particular reason not to tell the truth? Did he or she have a personal interest in the outcome of the case? Did the witness seem to have a good memory? Did the witness have the opportunity and ability to observe accurately the things he or she testified about? Did he or she appear to understand the questions clearly and answer them directly? Did the witness's testimony differ from the testimony of other witnesses? These are a few of the considerations that will help you determine the accuracy of what each witness said.

During the course of the trial you have received all the evidence that you may properly consider for deciding this case. Your decision in this case must be made solely on the evidence presented at the trial. Do not be concerned about whether evidence is "direct evidence" or "circumstantial evidence." You should consider all the evidence that was presented to you.

At times during the trial you saw lawyers make objections to questions asked by other lawyers, and to answers by witnesses. This simply meant that the lawyers were requesting that I make a decision on a particular rule of law. Do not draw any conclusion from such objections or from my rulings on the objections. These only related to the legal questions that I had to determine and should not influence your

thinking. When I sustained an objection to a question, and the witness was not allowed to answer a question asked, you must not attempt to guess what answer might have been given had I allowed the question to be answered. Similarly, when I told you not to consider a particular statement, you were told to put that statement out of your mind, and you may not consider that statement in your deliberations.

It is the court's role to determine what rules of law apply to the case. Some of these rules have been explained to you in the course of the trial, and I will be explaining others of them to you before you go to the jury room. This is my job; it is not the job of the lawyers. So, while the lawyers may have commented during the trial on some of these rules, you are to be guided only by what I say about them. You must follow all of the rules as I explain them to you. You may not follow some and ignore others. Even if you disagree or don't understand the reasons for some of the rules, you are bound to follow them.

If you decide that the prosecution has proved beyond a reasonable doubt that Martin Zeller is guilty of the crime or crimes charged, it will also be my job to decide what the punishment will be. You should not try to guess what the punishment might be. It should not enter into your consideration or discussions at any time.

The decision you reach in the jury room, whether guilty or not guilty, as to either or both of these charges, must be unanimous; that is, all twelve of you must agree. Your deliberations will be secret. You will never have to explain your verdict to anyone.

[NATURE OF THE OFFENSE]

As I explained to you earlier, the defendant, Martin Zeller, is on trial here because the prosecution has charged that Martin Zeller on or about September 12, 2001, in Thompson County, State of Marshall, committed the offenses of attempted murder and aggravated battery. The only question you must answer is whether the prosecution proved, beyond a reasonable doubt, that Martin Zeller committed either or both of these crimes. You may of course find Martin Zeller did not commit one of these crimes, or did not commit either crime.

[PRESUMPTION OF INNOCENCE--REASONABLE DOUBT--BURDEN OF PROOF]

As I have said many times, the defendant is presumed innocent of the charge. This presumption remains with the defendant throughout every stage of the trial and during your deliberations on the verdict, and is not overcome unless from all the evidence in the case you are convinced beyond a reasonable doubt that the defendant is guilty. The prosecution has the burden of proving the guilt of the defendant beyond a reasonable doubt and this burden remains on the prosecution throughout the case. Some of you may have served as jurors in civil cases, where you were told that it is only necessary to prove that a fact is more likely true than not true. In criminal cases, the prosecution's proof must be more powerful than that. It must be beyond a reasonable doubt.

[CHARGES]

The defendant is charged with the offense of attempted murder and aggravated battery. The defendant has denied that he/she is guilty of these charges.

[ATTEMPTED MURDER]

To prove attempted murder, the government must prove beyond a reasonable doubt, the following propositions:

First, that the defendant, Martin Zeller, took a substantial step toward the commission of the offense of murder with the intent to commit that offense;

Second, that the defendant, Martin Zeller, intended to kill Patrice Zeller, or another;

When I use the term “intended,” I mean, that a person acted with a conscious objective or purpose. Thus, a person acts with intent to cause the death of another when that person’s conscious objective or purpose is to cause the death of another.

Under our law, it is not required that the person who dies or was injured be the same person who was intended to be killed.

To find a person guilty of the crime of “attempt,” it does not matter that the intended crime was actually completed.

[AGGRAVATED BATTERY]

To prove aggravated battery, the government must prove beyond a reasonable doubt, the following propositions:

First, that the defendant, Martin Zeller, in doing so, administered or caused Patrice Zeller to take a poisonous substance, and

Second, that Patrice Zeller took the poisonous substance without Patrice Zeller’s consent

[EVIDENCE ADMITTED FOR A LIMITED PURPOSE: JURY TO LIMIT ITS CONSIDERATION]

Several times during the trial I told you that certain evidence was allowed into this trial for a particular and limited purpose.

[Describe evidence.]

When you consider that evidence, you must consider it for that limited purpose only.

Circumstantial evidence is the proof of facts or circumstances which give rise to a reasonable inference of other facts which tend to show the guilt or innocence of the defendant. Circumstantial evidence should be considered by you together with all the other evidence in the case in arriving at your verdict.

The believability of a witness may be challenged by evidence that on some former occasion he/she made a statement or acted in a manner that was not consistent with his/her testimony in this case. Evidence of this kind may be considered by you only for the limited purpose of deciding the weight to be given the testimony you heard from the witness in this courtroom.

During the course of the trial you were told that the prosecution and the defendant agreed, or stipulated, as to _____'s testimony if _____ were called as a witness. You are to consider that to be the testimony of _____ as if he or she were in court and testifying here.

You have read or heard the stipulated testimony of various witnesses which give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such a person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness's qualification, and all of the other evidence in the case.

Evidence that a witness has been convicted of an offense may be considered by you only as it may affect the believability of the witness.

During the trial several items were received into evidence as exhibits. These exhibits will be sent into the jury room with you when you begin to deliberate. Examine the exhibits if you think it would help you in your deliberations.

**[SELECTION OF FOREPERSON; COMMUNICATION
WITH THE JUDGE; VERDICT FORMS]**

When you go to the jury room to begin considering the evidence in this case I suggest that you first select one of the members of the jury to act as your foreperson. This person will help to guide your discussions in the jury room. Once you are there, if you need to communicate with me, the foreperson will send a written message to me. However, don't tell me how you stand as to your verdict -- for instance, if you are split 6-6 or 8-4, don't tell me that in your note.

As I have mentioned several times, the decision you reach must be unanimous; you must all agree.

I want to read to you now what is called the verdict form. This is simply the written notice of the decision that you reach in this case.

[The Court here reads the verdict forms.]

When you have reached a decision, each of you should sign the verdict form, put the date on it, and return it to me.