

PRETRIAL ORDER

Team members, advisors, coaches, and any other representatives of the competing teams must not observe the proceedings in any courtroom other than the courtroom in which their team is competing.

There must be no communication whatsoever between the participants and their advisors and coaches during the trial. Team members, i.e., advocates and witnesses, may confer among themselves without violating this rule.

A team's coaches and advisors are admonished not to talk or confer among themselves or with any guests or visitors in the courtrooms while the trials are in progress. Observers should try to enter and leave the courtroom unobtrusively. If there are abuses of this rule, the director may issue a rule requiring all coaches and advisors to stay outside the courtrooms during the remaining preliminary rounds.

Each team (prosecution and defense) has a total of 80 minutes within which to present its opening statement and its two witnesses, cross-examine the two witnesses for the other side, read into the record any relevant stipulations, and give closing argument. Each team is responsible for allocating its 80 minutes. A team need not use all of its allotted time.

The cross-examination of a witness is not restricted to the matters that the witness testified to during that witness's direct testimony. Assuming the cross-examiner makes an appropriate objection, the redirect examination cannot go beyond the scope of the cross-examination.

Objections during the direct and cross-examination of a witness must be made only by the advocate who is responsible for the direct or cross-examinations of that particular witness. Objections during the opening statement and closing argument must be made only by the advocate who is responsible for handling his or her team's opening or closing. This rule does not prohibit advocates from the same team from conferring with each other regarding any matter during the course of the trial. (As a matter of courtesy, counsel should request permission to approach the bench for sidebar conferences with the judge. The evaluators, although sitting as mock jurors, should be able to hear the sidebar discussions.)

During the course of the trial the arguments of motions and objections are strictly a matter for the judge to rule on. Timekeepers are instructed to stop the clock for such matters and for sidebar conferences.

Each side may present no more than two pre-trial motions, and has five minutes to argue such motions. These motions may be in writing and no longer than one page,

double-spaced, exclusive of caption and signatures.

A motion to exclude witnesses may also be made by the participants, and the court shall grant such motion: however, a witness may remain in the courtroom before he or she has testified. [This rule has been proposed and overwhelmingly supported at several advisors' meetings at previous Competitions.]

Exhibits may be enlarged but not changed except for the size and style of lettering on the exhibits, up to but no greater than 30 inches by 44 inches.

The exhibits in the file are reasonably accurate representations of the matters they purport to represent. If asked, the witnesses must admit that the exhibits in the case file are fair and accurate representations of that which they purport to represent on the relevant dates, and, where appropriate, satisfy the best evidence rule. The parties stipulate that the witness Oz Harter is qualified to identify Exhibits A and B as business records of the Oz Motorcycle Repair business located at 740 Madison Street, Marshall City, Marshall. The Harley motorcycle is the same make and model as the defendant's, but is not a picture of the defendant's actual motorcycle.

The parties further stipulate to the following facts:

- 1) On July 6, 1998, the defendant, Terry Gaffner, was convicted of the felony of violating Chapter 703, Marshall State Revised Statutes, Section 5, which makes it an offense to conspire to commit any other offense contained within the Marshall Revised Statutes. Chapter 21, Marshall State Revised Statutes (The State of Marshall Cannabis Control Act), makes it an offense to launder money or other proceeds acquired in violation of this Chapter; selling marijuana is such a violation. On the stipulated date, July 6, 1999, Terry Gaffner pleaded guilty to, and was sentenced to a term of 36 months with the Marshall Department of Corrections for, conspiring to launder money acquired in connection with the sale of Cannabis, an offense under the Marshall Cannabis Control Act. The underlying facts were that, during a time between December 5 and December 15, 1998, Terry Gaffner conspired with one Bruce Herbert to inflate the ticket sales records of the Orpheum Theater in Casper County, State of Marshall, so as to disguise the deposits of money actually acquired by said Bruce Herbert, owner of the Orpheum theater, from the sale and distribution of cannabis. Another count, charging Gaffner with the substantive offense of money laundering, was nolle pros'd in connection with Gaffner's plea agreement.**
- 2) The newspaper articles in the trial files contain information which is accurate, and the witnesses may not deny these facts.**

The parties may not bring in additional physical evidence or "newly discovered evidence."

The defendant's motion to dismiss the charge is DENIED and may not be reargued at trial.

Counsel may use laptop computers at counsel table during the trial.

The witnesses shall, at best as possible, testify in a manner consistent with the trial materials. If a witness makes a statement inconsistent with a statement the witness has made in court or has subscribed to, the witness must admit that the statement or transcript in the case file is authentic, and that he or she made the remarks contained in the transcript or statement. The witness must admit, if questioned, to fabricating a statement of material fact, which is not in the file. Where the trial materials are inconsistent, the witness must make a choice as to which scenario to follow. In some instances this choice will expose the witness to the possibility of being impeached. Otherwise, the witness is free to make reasonable assumptions about the background and personality of the character the witness is portraying.

The participants may in their opening statements and summations refer to the Court's instructions to the jury and the charges and verdict forms.

Copies of the Court's instructions to the jury will be provided to the evaluators, but will not be read aloud in court. The participants may not refer to any other instructions unless the judge has in fact given them during the trial itself. The participants cannot refer to an instruction if the evidence is not sufficient to permit the jury to receive such an instruction (for example, there should be no reference to impeachment if an impeachment is not in evidence).

The participants cannot request or refer to any verdict forms or charges other than those, which appear in the file.

K. Starr, Judge

**INSTRUCTIONS WHICH THE COURT
WILL GIVE IN**

PEOPLE v. GAFFNER

I

PRELIMINARY INSTRUCTIONS BEFORE TRIAL

Members of the Jury:

Before we begin, I would like to 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.

The People of the State of Marshall have brought this criminal case. I will sometimes refer to the People as the prosecution. The People are represented here by Mr./Ms. _____ and Mr./Ms. _____. The defendant, Terry McGrath, is represented by his lawyers, Mr./Ms. _____ and Mr./Ms. _____.

The defendant has been charged by the prosecution with the offense of Financial Identity Theft in excess of \$300.00. The charge against the defendant is contained in what is known as the indictment. The indictment is not evidence of anything, but rather is simply the description of the charge brought by the prosecution against the defendant. The defendant has pleaded not guilty to the charge; that is, he denies committing the offense I spoke of before. The defendant is presumed innocent and may not be found guilty by you unless all twelve of you unanimously find that the prosecution has proved his/her guilt 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 Financial Identity Theft in excess of \$300.00. 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 Terry McGrath is guilty of the crime 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, 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.

[STIPULATIONS OF TESTIMONY]

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.

[STIPULATIONS OF FACT]

While we were hearing evidence you were told that the prosecution and the defendant agreed, or stipulated, that

[stipulation]

This means simply that they both accept the fact that

[stipulated fact]

There is no disagreement over that, so there was no need for evidence by either side on that point. You must accept that as fact in your deliberations, even though nothing more was said about it one way or the other.

**[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.

**[JURY TO CONSIDER ONLY THIS DEFENDANT,
NOT WHETHER OTHERS HAVE COMMITTED CRIMES]**

As I explained to you earlier, the defendant, Terry McGrath, is on trial here because the prosecution has charged that Terry Gaffner on or about November 4, 2001, in Thompson County, State of Marshall, committed the offense of Financial Identity Theft of over \$300.00. The only question you must answer is whether the prosecution proved, beyond a reasonable doubt, that Terry Gaffner committed this crime. You may of course find Terry Gaffner did not commit this crime. It is not up to you to decide whether any other person is guilty of any crime charged. The question of the possible guilt of others should not enter your thinking when you decide whether the prosecution has proved beyond a reasonable doubt that the defendant Terry Gaffner committed the 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 Financial Identity Theft of over \$300.00. The defendant has denied guilt of this charge.

[FINANCIAL IDENTITY THEFT]

To sustain a charge of Financial Identity Theft, the State must prove the following propositions:

FIRST PROPOSITION: That the defendant used any personal identifying information or personal identification document of another person to fraudulently obtain credit, money, goods, services, or other property in the name of that other person.

The use of a credit card with another person's name on it, where the defendant uses that other person's name or identity, or creates the impression that the other person has given permission to use his or her identity, or fails to correct an erroneous impression that the other person has given such permission, when the other person has not given such permission, creates an inference that the credit card was used fraudulently.

SECOND PROPOSITION: That the defendant did so knowingly. Knowingly shall be determined by an evaluation of all circumstances surrounding the use of the other person's identifying information or document.

THIRD PROPOSITION: That the value of the credit, money, goods, services, or property exceeded \$300.00.

If you find from your consideration of all the evidence that each of these propositions have been proved beyond a reasonable doubt, then you should find the defendant guilty.

If, on the other hand, you find from your consideration of all the evidence that either of these propositions has not been proved beyond a reasonable doubt, then you should find the defendant not guilty.

When the word "knowingly" is used in these instructions, it means that the defendant realized what he/she was doing and was aware of the nature of his/her conduct, and did not act through ignorance, mistake or accident. (Knowledge may be proved by the defendant's conduct, and by all the facts and circumstances surrounding the case.)

It is not a defense to the offense of Financial Identity Theft that the person whose identity was used corrected the credit or debit which was incurred in connection with the unauthorized and fraudulent use of his or her identity. Actual damage is not an element of Financial Identity Theft.

**[IMPEACHMENT BY PRIOR CONVICTION
(WITNESS OTHER THAN DEFENDANT)]**

You may consider evidence that a witness has been convicted of an offense only as it may affect the believability of the witness.

**[IMPEACHMENT BY PRIOR INCONSISTENT
STATEMENTS, NOT UNDER OATH]**

You will recall that _____ testified during the trial [description, if needed]. You will also recall that it was brought out that before this trial he made statements about this matter. These earlier statements were brought to your attention to help you decide if you believe _____'s testimony. You cannot use these earlier statements as evidence in this case. However, if _____ said something different about this matter earlier, and the two stories were conflicting, then there may be reason for you to doubt _____'s testimony here. That's up to you to decide.

**[IMPEACHMENT BY PRIOR INCONSISTENT
STATEMENTS, UNDER OATH]**

You may recall that _____ testified during the trial [description, if needed]. You will also recall that it was brought out that before this trial he made statements concerning the subject matter of this trial. Even though these statements were not made in this courtroom they were made under oath at _____ [e.g.: at a hearing to determine bond, or at the time he presented evidence to the grand jury]. Because of this you may consider these statements as if they were made at this trial and rely on them as much, or as little, as you think proper.¹

**[DEFENDANT'S TESTIMONY: IMPEACHMENT
BY OTHERWISE INADMISSIBLE STATEMENT]**

[You will recall that the defendant, Terry Gaffner, testified during the trial on his/her own behalf. You will also recall that it was brought out that he/she was questioned at an earlier time and made certain statements. These earlier statements by Terry Gaffner were brought to your attention only to help you decide if you believe what he/she has testified to here in court. If he/she said something different earlier, and the two stories were conflicting, then it will be up to you to decide if what he/she said here in court was true. You should not, however, consider what was said earlier as proof or evidence of the defendant's guilt. The

¹Comment. This instruction is for use only when the prior statement that is inconsistent with statements made at trial was given under oath at a previous trial, hearing, or other proceeding, or in a deposition. See Fed.R.Evid. 801(d)(1)(A). If these standards are not met, the instruction about impeachment by prior inconsistent statements that were not under oath should be given.

prosecution must use other evidence to prove, beyond a reasonable doubt, that the defendant committed the crime.

**[AVAILABILITY OF EXHIBITS
DURING DELIBERATIONS]**

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.

VERDICT FORMS

*

We, the jury, find the defendant Terry Gaffner Not Guilty of the offense of Financial Identity Theft.

Foreperson

(Lines for eleven other jurors)

*

We, the jury, find the defendant Terry Gaffner Guilty of the offense of Financial Identify Theft.

Foreperson

(Lines for eleven other jurors)

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