

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH SS.
NORTHERN DISTRICT

SUPERIOR COURT

State of New Hampshire

v.

Adam Montgomery

No. 216-2022-CR-577

JURY INSTRUCTIONS

Members of the jury, you are about to hear opening statements by counsel. Before that I'm going to give you some general instructions as to the law that applies to this case and some other matters which will give you some guidance as you consider the evidence in this case. After you have heard the evidence and you have heard closing arguments, you will hear further instructions from the court, and then you will retire to the jury deliberation room to decide your verdict.

You should consider all of the instructions I give you both now and at the end of the case as a whole and not single out one particular instruction as stating the law. You will also have a written copy of my instructions with you in the jury deliberation room.

Function of the Court and Jury

In order to reach a fair and just verdict, you must understand and follow the law as I explain it to you. For example, you have to understand the definition of the crime(s) with which the defendant is charged. You have to understand how convinced one way or the other you should be before you reach a verdict. You have to understand what to consider in deciding whether to believe a particular witness. These instructions will explain the law as to these and other matters so that you can reach a fair and just verdict.

It is your duty as jurors to follow all of the instructions I am about to give you. Regardless of any opinion you may have as to what the law ought to be, the law as I explain it to you is the law you must follow in reaching your verdict.

It is up to you to decide the facts. You must decide the facts solely from the evidence in this trial. You must apply the law given to you in these instructions to the facts and in this way reach a fair and just verdict.

You should decide the facts without prejudice, without fear, and without sympathy. You should decide this case based solely on the evidence presented and the law as I explain it to you.

Evidence in the Case

In deciding this case you should consider only the evidence in the case. The evidence consists of the testimony under oath of the witnesses, exhibits which have been admitted into evidence, facts of which I take judicial notice, and stipulations of certain facts.

During the trial the lawyers may make objections. The lawyers are supposed to object when they believe that certain evidence is not admissible. If I sustain an objection or exclude any evidence, you must not guess as to what the answer or evidence would have been. If I order that a question and answer be stricken from the record, you must not consider either the question or the answer as evidence.

A judge is required to be neutral, and I am in fact neutral. If, during this trial or at any time during this process you believe that I have expressed or suggested an opinion as to the facts in my rulings, you should ignore that belief. It is up to you alone to decide the facts.

In short, you should consider only the legally admissible evidence in deciding this case; that is, the testimony of the witness, the exhibits, stipulations, and facts of which I took judicial notice.

Indictment Not Evidence

The fact that the defendant has been arrested and indicted is not evidence of guilt. The indictments are simply a way of giving the defendant notice of the charges. The indictments are a formal way of accusing the defendant of a crime in order to bring the defendant to trial. You must not consider the indictments as evidence of guilt.

Possible Punishment Not Relevant

The possible punishment the defendant may receive if you return a guilty verdict should not influence your decision. The duty of imposing sentence is solely for the Judge. You should base your verdict only on the evidence and the law without considering the possible punishment.

Presumption of Innocence

As you were instructed during the general selection process, there is a presumption of innocence that applies and continues throughout this trial until the State convinces you beyond a reasonable doubt that the defendant is guilty of each and every element of the offenses with which s/he has been charged, and the defendant has no obligation whatsoever to prove his/her innocence in this matter, and that includes the right not to testify if s/he so chooses. You are not allowed to draw any unfavorable, adverse or negative inference if the defendant does not take the stand in this matter.

Jury Recollection Controls

You will hear the lawyers discuss the facts and the law in their opening statements and closing arguments to you. These statements and arguments are not evidence. Their purpose is to help you understand the evidence and the law. If the lawyers have stated the law differently from the law as I explain it to you in these instructions, then you must follow these instructions and ignore the statements of the lawyers. If the lawyers have stated the evidence differently from how you recall it, then you should follow your own memory of what the evidence was.

Direct and Circumstantial Evidence

There are two kinds of evidence -- direct and circumstantial. Direct evidence is direct proof of a fact, such as the testimony or statement of a person about what the person saw, heard or did. Circumstantial evidence is indirect evidence, that is, proof of a chain of facts from which you could find that another fact exists, although it has not been proved directly. For example, if you look outside and see water droplets falling from the sky, that is direct evidence that it is raining. But if you look out the window at night and the ground is dry and again the next morning and the ground is wet, that is indirect or circumstantial evidence that it rained during the night. By circumstantial evidence, I simply mean that you may infer the ultimate fact from another fact shown. You should feel free to reach reasonable conclusions from proven facts. Conversely, you may not reach conclusions based on facts that have not been proved. In the rain

example, wet ground alone may support an inference that it rained during the night, but in the absence of additional evidence, it will not necessarily support inferences about how much rain fell or for how long a time period.

You should consider both kinds of evidence. You are permitted to give equal weight to both, but it is for you to decide how much weight to give any evidence, whether it be direct or circumstantial. However, to be sufficient to establish guilt beyond a reasonable doubt, circumstantial evidence must exclude all other rational conclusions. This means that if, from the circumstantial evidence, it is rational to arrive at two conclusions, one consistent with guilt and one consistent with innocence, then you must choose the rational conclusion consistent with innocence. However, do not consider each item of circumstantial evidence in isolation. In determining whether all other rational conclusions have been excluded, you should consider each item of circumstantial evidence in the context of all the other evidence, which includes all other circumstantial evidence and direct evidence.

You should consider all the direct and circumstantial evidence in the case as well as any reasonable inferences you draw therefrom in deciding whether the State has proved all the elements of the crime beyond a reasonable doubt.

Credibility of Witnesses

In deciding this case, you must decide the credibility of witnesses; that is, it is up to you to decide who to believe. If there is any conflict between the witnesses, then you must resolve the conflict. Simply because a witness has taken an oath to tell the truth does not mean that you have to accept the testimony as true.

Use your common sense and judgment. Consider factors you use in deciding important issues in your everyday lives. For example, you may consider the following:

1. The witness's appearance, attitude, and behavior on the stand and the way the witness testified;
2. The witness's age, intelligence and experience;
3. The witness's opportunity and ability to see or hear the things about which the witness testified;
4. The accuracy of the witness's memory;
5. Any motive of the witness not to tell the truth;

6. Any interest that a witness had in the outcome of the case;
7. Any bias of the witness, or friendship or animosity the witness may have for or against any of the other people in the case;
8. The consistency or inconsistency of the witness' s testimony;
9. Whether or not what the witness said appears reasonable or unreasonable;
10. Whether what the witness said is consistent or inconsistent with the testimony of other witnesses, or with statements the witness made at another time.

In deciding which witnesses to believe and how much of their testimony to believe, you should consider both the direct and cross-examination of the witnesses.

If you believe that part of a witness's testimony is false, you may choose to distrust other parts also, but you are not required to do so. Inconsistencies and contradictions within a witness's testimony or between witnesses do not necessarily mean that you should disbelieve the witness. It is possible for honest people to witness the same event and see or hear things differently. You should evaluate inconsistencies and contradictions and determine whether they are important or unimportant. You need not believe any witness even though the testimony is uncontradicted. Nor are you required to accept testimony as true simply because some or even all of the witnesses agree with each other. You may find the testimony of one witness or of a few witnesses more persuasive than the testimony of a larger number.

These principles apply to all witnesses, whether they are ordinary citizens, police officers, experts or otherwise.

In short, you should consider the testimony of each witness and give it the weight you think it deserves.

Number of Witnesses

The weight to be given to the evidence should be determined by the quality of the evidence not the quantity. It is not the number of witnesses or quantity of evidence, but the quality of the evidence that is important.

Judge Decides What is Admissible

Testimony, writings, objects, and other things presented during trial are evidence only if the judge accepts them as evidence. Throughout the trial I may rule on whether certain evidence

was admissible or not admissible. These are legal decisions which do not concern you, because only the judge is permitted to decide legal questions. I may make three types of legal decisions with regard to evidence:

First, I may stop some information from being presented at all; you are not to imagine what that information might have been had I allowed it to be presented.

Second, I may rule that some information was not admissible after it was presented; you are to ignore this information and not use it as evidence.

Finally, I may allow some information to be entered as evidence after hearing objections by one of the lawyers; you are not to give such evidence any special importance as a result of my ruling. It is not my duty and I do not try to determine whether evidence is important when I make my rulings.

Burden of Proof and Reasonable Doubt

Now, I've addressed what you should not consider and what you should consider in reaching a verdict. I am now going to discuss how convinced one way or the other you must be, and this is referred to as the burden of proof.

Under our constitutions, all defendants in criminal cases are presumed to be innocent until proven guilty beyond a reasonable doubt. The burden of proving guilt is entirely on the State. The defendant does not have to prove his innocence. As I told you earlier, the defendant enters this courtroom as an innocent person and you must consider him/her to be an innocent person until the State convinces you beyond a reasonable doubt that s/he is guilty of every element of the alleged offense.

If after all the evidence and arguments you have a reasonable doubt as to the defendant having committed any one or more elements of the offense, then you must find him/her not guilty.

Now, finally, members of the jury, a reasonable doubt is just what the words would ordinarily imply. The use of the word "reasonable" means simply that the doubt must be reasonable rather than unreasonable; it must be a doubt based on reason. It is not a frivolous or fanciful doubt, nor is it one that can easily be explained away. Rather, it is such a doubt based on reason as remains after consideration of all the evidence that the State has offered against it.

The test you must use is this: If you have a reasonable doubt as to whether the State has proven any one or more of the elements of the crime charged, you must find the defendant not guilty. However,

if you find the State has proven all of the elements of the offense charged beyond a reasonable doubt, you should find the defendant guilty.

With respect to the final instructions regarding the offense(s), I will wait until the end of the trial and after closing arguments and discuss it with you at that time.

Communication Instruction

Please do not discuss the case at all, not with the other members of the jury or with anyone else, until jury deliberations start at the end of the trial after all the evidence and final arguments have been presented. Please keep an open mind until you have heard all of the evidence in this case. During the course of the trial please take care to avoid any contact with any persons involved in this case, the lawyers, the witnesses, and the parties. Also, please be sure to avoid any T.V., radio, on-line or newspaper coverage of this case, should there be any. Finally, do not conduct any research or investigation of your own concerning the case. You must render your verdict based solely on the evidence submitted during the trial.

Our trial day will generally go from approximately 9:00 a.m. to 4:00 p.m. We will also generally take a mid-morning and mid-afternoon break.

The Court has asked you to put your cell phones in a box in the jury deliberation room. Please make sure they are on silence or turned off altogether. You will be permitted to check your phones when you are on a break. However, you are not permitted to take notes of any kind—not on paper nor on your phones. The reason for this is that it is important that your recollection of the evidence is what controls. If notes are taken, sometimes they can be given undue weight and it is important that when it comes time to deliberate you are using your individual and collective memories about the evidence and one note, or written recollection, does not control. You should also be aware that no transcript will be available to you when it comes time to deliberate. Therefore, please listen very carefully as the evidence is presented.

If during the course of the trial you have any questions or problems, you become thirsty or need anything, just get the bailiff's attention, and he will assist you. If at any time during the trial you cannot hear, raise your hand and I'll ask the witness to speak up.

You are now going to hear opening statements by counsel.

* * * * *

Members of the jury, I am now going to complete my instructions to you.

Please remember that in order to reach a verdict in this case, whether it is guilty or not guilty, your verdict must be unanimous.

Prior Inconsistent Statements

In deciding whether to believe a witness, you may consider whether the witness made statements before trial which were not consistent with the witness's testimony at trial. Thus, if the witness made an inconsistent statement before trial you may use that statement in deciding whether to believe that witness's trial testimony. Keep in mind that you may not use the statement made before trial as proof that the facts in the statement are true. The statement made before trial is only to be used by you in deciding whether to believe a witness.

There are, however, two exceptions to this general rule that prior statements may only be used in assessing witness credibility. If the statement made before trial was made by the defendant, or by a witness under oath, then you may use that prior statement as proof that the facts in the statement are true.

I am now going to discuss the definition of a crime and the crimes with which the defendant is charged.

Definition of a Crime

A crime is the breaking of a law for which the law provides punishment. All crimes have at least two parts: an act and a criminal state of mind. In deciding whether a person is guilty of a crime, you must determine both what the person's actions were and what his state of mind was.

For a person to be guilty of a crime, he must have physically acted to do something that is criminal, and he must have had a particular state of mind. Unless a person both acted to do something that is criminal and had the required mental state, that person has not committed a crime. That means that if a person either did not physically act to do something criminal or did not have the required mental state, then he is not guilty of a crime.

To understand how mental state works, consider this example: suppose two automobile drivers hit a pedestrian who was crossing the street. Suppose one of the drivers hit the pedestrian deliberately, whereas the other one did so out of carelessness. The two drivers would be guilty of

different crimes even though they both committed the same act, because each had a different mental state.

Proof of Intent

To prove that the defendant has committed a crime, the State must prove, first, that the defendant did certain acts and, second, that the defendant acted with a certain intent.

Whether the defendant acted with the particular intent charged is a question of fact for you to decide. Keep in mind that there is often no direct evidence of intent because there is no way of examining the operation of a person's mind. You should consider all of the facts and circumstances in evidence in deciding whether or not the State has proven that the defendant acted with the intent as it is charged in each indictment.

The Charged Offenses

Charge ID 2008742C – Armed Career Criminal - Shotgun

On charge ID 2008742C the defendant is charged with the crime of Armed Career Criminal - Shotgun. The definition of this crime has 3 parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant has been convicted of any combination of 3 or more qualifying felonies in this state or any other state under the applicable law; and
2. The defendant owned or had in his possession or under his control a shotgun; and
3. The defendant acted knowingly.

Certain words in the definition need to be further defined.

“Possession” - A person “possesses” an item when he has it in his physical custody or exercises dominion and control over it. Possession can be actual or constructive. Actual possession is when a person has direct physical control over the item. Constructive possession is the power to determine the use or disposition of the item. In either case, the State must prove:

1. That the defendant knew the location of the item; and
2. That the defendant knew the nature of the item; and

3. That the defendant had custody of the item in the sense that it was in a place where it was under his control.

In a case of constructive possession, mere access to the item is insufficient, as is mere presence in the location where the item is found. The defendant must have the power to control the item. Constructive possession can be inferred from all the evidence presented, including any incriminating statements or any other circumstances linking the defendant to the item. Furthermore, constructive possession of the item need not be exclusive; the item can be possessed jointly with another.

“Knowingly” - A person acts knowingly when he is aware of the nature of his conduct or the circumstance under which he acted. The state does not have to prove that the defendant specifically intended or desired a particular result. What the state must prove is that the defendant was aware of the nature of his conduct.

The parties have stipulated as fact that at the time of the allegations in this case, the defendant had previously been convicted in this state or any other state of a combination of 3 or more qualifying felony convictions as listed under the applicable law.

Charge ID 2008743C – Armed Career Criminal - Rifle

On charge ID 2008743C the defendant is charged with the crime of Armed Career Criminal - Rifle. The definition of this crime has 3 parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant has been convicted of any combination of 3 or more qualifying felonies in this state or any other state under the applicable law; and
2. The defendant owned or had in his possession or under his control a rifle; and
3. The defendant acted knowingly.

Certain words in the definition need to be further defined.

“Possession” – The definition is provided above.

“Knowingly” – The definition is provided above.

The parties have stipulated as fact that at the time of the allegations in this case, the defendant had previously been convicted in this state or any other state of a combination of 3 or more qualifying felony convictions as listed under the applicable law.

Charge ID 1964101C – Receiving Stolen Property - Shotgun

The defendant is charged with the crime of Receiving Stolen Property - Shotgun. The definition of this crime has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant received or retained the property of another, to wit, a shotgun (firearm);
and
2. The defendant knew that the property had been stolen, or believed that it had probably been stolen; and
3. The defendant acted with a purpose to deprive the owner thereof;

These are the elements of the crime of Receiving Stolen Property. Certain words in the definition need to be further defined.

“Receives” means acquiring possession, control or title.

“Property” means anything of value.

“Knowingly” – The definition is provided above.

“Purpose to deprive ” means to have the conscious object to withhold property permanently or for so extended a period or to use under such circumstances that a substantial portion of its economic value, or of the use and benefit thereof, would be lost.

“Purposely” - A person acts purposely when his conscious object is to engage in certain conduct. The State must prove that the defendant had the conscious object to engage in this conduct. The key words here are “conscious object”. To have a “conscious object” means to have a specific intent. It means that the defendant desired to engage in certain conduct. It is not enough for the state to prove that the defendant knew or was aware of what he was doing. Nor is it enough for the state to prove that the defendant created a risk of injury or harm. To prove that the

defendant acted purposely requires more than. It requires proof that the defendant specifically intended or desired to do a particular act.

Charge ID 1964100C – Receiving Stolen Property - Rifle

The defendant is charged with the crime of Receiving Stolen Property - Rifle. The definition of this crime has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant received or retained the property of another, to wit, a rifle (firearm); and
2. The defendant knew that the property had been stolen, or believed that it had probably been stolen; and
3. The defendant acted with a purpose to deprive the owner thereof;

These are the elements of the crime of Receiving Stolen Property. Certain words in the definition need to be further defined.

"Receives" means acquiring possession, control or title.

"Property" means anything of value.

"Knowingly" – The definition is provided above.

"Purpose to deprive " means to have the conscious object to withhold property permanently or for so extended a period or to use under such circumstances that a substantial portion of its economic value, or of the use and benefit thereof, would be lost.

"Purposely" - A person acts purposely when his conscious object is to engage in certain conduct. The State must prove that the defendant had the conscious object to engage in this conduct. The key words here are "conscious object". To have a "conscious object" means to have a specific intent. It means that the defendant desired to engage in certain conduct. It is not enough for the state to prove that the defendant knew or was aware of what he was doing. Nor is it enough for the state to prove that the defendant created a risk of injury or harm. To prove that the defendant acted purposely requires more than. It requires proof that the defendant specifically intended or desired to do a particular act.

Charge ID 1964099C – Theft by Unauthorized Taking - Shotgun

On charge ID 1964099C the defendant is charged with the crime of theft by unauthorized taking or transfer - shotgun. The definition of this crime has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant obtained or exercised unauthorized control over the property of another; and
2. The defendant acted with a purpose to deprive another of the property; and
3. The property was a shotgun (firearm).

These are the elements of the crime of theft by unauthorized taking. Certain words in the definition need to be further defined.

“To obtain” means to bring about a transfer of possession or of some other legally recognized interest in property.

“Property” means anything of value.

“Purpose to deprive” means a conscious object or intention to withhold the property permanently, or for so long or under such circumstances that a substantial portion of its economic value or the use and benefit of it would be lost, or to dispose of the property under circumstances making it unlikely that the owner would recover it.

Charge ID 1964098C – Theft by Unauthorized Taking – Rifle

On charge ID 1964098C the defendant is charged with the crime of theft by unauthorized taking or transfer – rifle. The definition of this crime has three parts or elements. The State must prove each element beyond a reasonable doubt. Thus, the State must prove that:

1. The defendant obtained or exercised unauthorized control over the property of another; and
2. The defendant acted with a purpose to deprive another of the property; and

3. The property was a rifle (firearm).

These are the elements of the crime of theft by unauthorized taking. Certain words in the definition need to be further defined.

“To obtain” means to bring about a transfer of possession or of some other legally recognized interest in property.

“Property” means anything of value.

“Purpose to deprive” means a conscious object or intention to withhold the property permanently, or for so long or under such circumstances that a substantial portion of its economic value or the use and benefit of it would be lost, or to dispose of the property under circumstances making it unlikely that the owner would recover it.

Conclusion

In conclusion, members of the jury, let me say that this case is important to both of the parties -- the State and the defendant. The principles of law that I have given to you are intended to guide you in reaching a fair result. You are to exercise your judgment and common sense, with honesty, understanding and due deliberation. As I said before, you should decide this case without passion, without prejudice, and without sympathy. It is your highest duty as officers of this Court to conscientiously determine a fair and just result in this case.

Now, again as you were instructed during the general selection process, there is a presumption of innocence that applies and continues throughout this trial until the State convinces you beyond a reasonable doubt that the defendant is guilty of each and every element of the offenses with which s/he has been charged, and the defendant has no obligation whatsoever to prove his innocence in this matter, and that includes the right not to testify if s/he so chooses.

When you have considered and weighed all of the evidence, you must make one of the following findings with respect to the charges before you. If you have a reasonable doubt as to whether the State has proved any one or more of the elements of the offense charged, you must find the defendant not

guilty. On the other hand, if you find that the State has proved all of the elements of the offense charged beyond a reasonable doubt, then you should find the defendant guilty.

And I remind you that a reasonable doubt is just what the words would ordinarily imply. The use of the word "reasonable" means simply that the doubt must be reasonable rather than unreasonable. It must be a doubt based on reason. It is not a frivolous or fanciful doubt, nor is it one that can easily be explained away. Rather, it is such a doubt based upon reason as remains after consideration of all of the evidence that the State has offered against it.

As I mentioned we will select a foreperson at random at the end of these instructions. The foreperson acts much like the chair of a committee. He or she should make sure that you take up the issues that I have described, and should make sure that each juror has a full opportunity to present his or her opinions and arguments.

I suggest that deliberations involve several components: You should each think for yourself about the evidence and the law. You should speak up and let your fellow jurors know your opinions, views, and positions. You should listen carefully and keep an open mind as to what your fellow jurors have to say. And you should make every reasonable effort to reach a unanimous agreement.

The verdict that you reach must be a unanimous verdict and represent the considered judgment of each juror. In order to return a verdict, all twelve of you must agree on your verdict. As you deliberate, try your best to work out differences. Do not hesitate to change your mind if you are convinced that other jurors are right and that your original position was wrong. But do not change your mind just because other jurors see things differently, or just to get the case over with. In the end, your vote must be exactly that – your own vote. It is important for you to reach unanimous agreement, but only if you can do so honestly and in good conscience.

If any questions concerning the law should arise during your deliberations, the foreperson should write the questions out and sign, and hand them to the court officer. The officer will bring them to me, and I will respond.

You should take as much time as you like. When you have arrived at a verdict, let the court officer know and you will be returned to the courtroom where the foreperson will render the verdict orally in response to questions that the Clerk of Court will ask.

Please bear in mind, in your deliberations, there can be no communications with anyone other than the other deliberating jurors in the case or the bailiff. You are not to use your cell phones or smart phones to communicate with anyone, check e-mail, or use the internet. Your verdict in this case must be based solely on the evidence presented at trial and the law as I have explained it to you.

We will now select the alternates and the jury foreperson.

A handwritten signature in black ink, appearing to read "Amy B. Messer", with a long horizontal flourish extending to the right.

Amy B. Messer
Presiding Justice