

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

SUPERIOR COURT
218-2019-CR-01132

STATE

V.

BRANDON M. CASTIGLIONE

JURY TRIAL
EXHIBIT AND WITNESS LIST

JUDGE: HON. DAVID W. RUOFF
MONITOR: MARYANN CHOUINARD
DATES: MAY 8, 2023, ETC

AG: BENJAMIN AGATI
AG2 ADAM WOODS
DA: WADE HARWOOD
DA2: AMY ASHWORTH

STATE

DESCRIPTION

<u>STATE</u>	<u>DESCRIPTION</u>
1	FULL PHOTO OF LUIS GARCIA
2	FULL PHOTO OF STAIRWELL
3	FULL PHOTO OF HALLWAY
4	FULL PHOTO OF END OF HALLWAY
5	ID PHOTO OF BEDROOM FLOOR
6	ID PHOTO OF PISTOL TOP VIEW
7	FULL PHOTO OF LUIS GARCIA NECK DOWN
8	FULL PHOTO OF LUIS GARCIA TOP HALF
9	FULL PHOTO OF DRIVEWAY
10	FULL PHOTO OF FRONT OF 15 RIDGEMONT DRIVE
11	FULL PHOTO OF FRONT WALKWAY
12	FULL PHOTO OF FRONT DOOR
13A	FULL PHOTO OF INSIDE FRONT DOOR
13B	FULL PHOTO OF FRONT DOOR INSIDE LOCK
14	FULL PHOTO OF LEFT SIDE OF 15 RIDGEMONT DRIVE
15	FULL PHOTO OF REAR OF 15 RIDGEMONT DRIVE
16	FULL PHOTO OF DANIELLE PATALANO TEXT MESSAGE
17	ID PHOTO OF BEDROOM FLOOR FROM DOORWAY
18	FULL PHOTO OF JGO-2 ON FLOOR
19	FULL PHOTO OF JGO-2 CLOSE ON FLOOR
20	FULL PHOTO OF JGO-2 PRIMER
21	FULL PHOTO OF JGO-3 ON FLOOR
22	FULL PHOTO OF JGO-3 CLOSE UP
23	FULL PHOTO OF JGO-3 SIDE CLOE UP
24	FULL PHOTO OF JGO-1 BOTTOM SERIAL NUMBER
25	FULL PHOTO OF JGO-1 TOP OF DRAWERS
26	FULL PHOTO OF JGO-1 ABOVE DRAWERS
27	FULL PHOTO OF JGO-1, JGO-1a, JGO-1b
28	FULL PHOTO OF JGO-1a PRIMER

29	ID	PHOTO OF BEDSIDE CABINET TOP
30	FULL	PHOTO OF BEDSIDE CABINET FRONT
31	FULL	PHOTO OF BEDSIDE CABINET WITH BED
32	FULL	PHOTO OF BEDSIDE CABINET TOP DRAWER
33	ID	PHOTO OF BEDSIDE CABINET MIDDLE DRAWER
34	FULL	PHOTO OF BEDSIDE CABINET BOTTOM DRAWER
35	ID	PHOTO OF BEDSIDE CABINET BOTTOM DRAWER CLOSED
36	FULL	PHOTO OF BEDSIDE CABINET BOTTOM DRAWER WIDE VIEW
37	FULL	PHOTO OF GLOCK CASE CLOSED
38	FULL	PHOTO OF GLOCK CASE OPEN
39	FULL	PHOTO OF GLOCK CASE CONTENTS 1
40	FULL	PHOTO OF GLOCK CASE CONTENTS 2
41	FULL	PHOTO OF GLOCK CASE WITH SMALL ENVELOPE
42	FULL	PHOTO OF SMALL ENVELOPE
43	FULL	PHOTO OF JGO-1 IN BOX
44	FULL	PHOTO OF JGO-2 T3 COMPARISON
45	FULL	PHOTO OF SAMPLE FIOCCHI BOX
46	FULL	PHOTO OF JGO-3 TIP VIEW
47	FULL	PHOTO OF JGO-3 REAR VIEW
48	FULL	PHOTO OF JGO-3 REAR VIEW CLOSE
49	FULL	PHOTO OF JGO-3 SIDE VIEW
50A	FULL	PHOTO OF JGO-3 SIDE VIEW OPPOSITE
50B	FULL	PHOTO OF JCO-3 SIDE VIEW CROPPED
51	FULL	PHOTO OF JGO-1 FUMED
52	FULL	PHOTO OF TOP OF GUN SLIDE
53	FULL	PHOTO OF L1 ALTERNATE LIGHT SOURCE
54	FULL	PHOTO OF L1 DIGITAL IMAGE
55	FULL	PHOTO OF L1 ANALYSIS
56	FULL	PHOTO OF L1 COMPARISON
57	FULL	PHOTO OF L1 COMPARISON COLORS
58	FULL	PHOTO OF L3 ALTERNATE LIGHT SOURCE
59	FULL	PHOTO OF L3 DIGITAL IMAGE
60	FULL	PHOTO OF L3 ANALYSIS
61	FULL	PHOTO OF L3 COMPARISON
62	FULL	PHOTO OF MARK CASTIGLIONE CALL LOGS 1
63	FULL	PHOTO OF MARK CASTIGLIONE CALL LOGS 2
64	FULL	PHOTO OF MARK CASTIGLIONE CALL LOGS 3
65	ID	PHOTO OF DEFENDANT'S BEDROOM'S HALLWAY
66	ID	PHOTO OF DEFENDANT'S BEDROOM HALLWAY VIEW JGO-1
67	FULL	PHOTO OF DEFECT WIDE VIEW
68	FULL	PHOTO OF DEFECT MIDDLE VIEW
69	FULL	PHOTO OF DEFECT CLOSE VIEW
70	FULL	PHOTO OF FARO SCAN WINDOWSILL TO DEFECT
71	FULL	PHOTO OF FARO SCAN FLOOR TO WINDOWSILL
72	FULL	PHOTO OF FARO SCAN FLOOR TO WINDOWSILL
73	FULL	PHOTO OF DEFECT AND JGO-3
74	FULL	PHOTO OF LIVING ROOM

75	FULL	PHOTO OF DINING ROOM
76	FULL	PHOTO OF BACK DOOR
77	FULL	PHOTO OF BACK DOOR
78	FULL	PHOTO OF UPSTAIRS BATHROOM
79	FULL	PHOTO OF MASTER BEDROOM
80	ID	PHOTO OF DEFENDANT'S BEDROOM
81	FULL	PHOTO OF WINDOW ABOVE VICTIM
82	FULL	PHOTO OF WINDOW OPPOSITE VICTIM
83	FULL	PHOTO OF DOWNSTAIRS WINDOW 1
84	FULL	PHOTO OF DOWNSTAIRS WINDOW 2
85	FULL	PHOTO OF DOWNSTAIRS WINDOW 3
86	FULL	PHOTO OF DOWNSTAIRS WINDOW 4
87	FULL	PHOTO OF DOWNSTAIRS BATHROOM
88	FULL	PHOTO OF BASEMENT BULKHEAD
89	FULL	PHOTO OF BRANDON CASTIGLIONE FRONT
90	FULL	PHOTO OF BRANDON CASTIGLIONE RIGHT HAND BACK
91	FULL	PHOTO OF BRANDON CASTIGLIONE RIGHT PALM
92	FULL	PHOTO OF BRANDON CASTIGLIONE LEFT HAND BACK
93	FULL	PHOTO OF BRANDON CASTIGLIONE LEFT PALM
94A	FULL	PHOTO OF LUIS GARCIA RADIOLOGY 1
94B	FULL	PHOTO OF LUIS GARCIA RADIOLOGY 2
95	FULL	PHOTO OF LUIS GARCIA RIGHT HAND BACK
96	FULL	PHOTO OF LUIS GARCIA RIGHT PALM
97	FULL	PHOTO OF LUIS GARCIA RIGHT FOREARM
98	FULL	PHOTO OF LUIS GARCIA LEFT HAND BACK
99	FULL	PHOTO OF LUIS GARCIA LEFT PALM
100	FULL	PHOTO OF LUIS GARCIA LEFT FOREARM
101	FULL	PHOTO OF LUIS GARCIA ENTRY WOUND
102	FULL	PHOTO OF LUIS GARCIA SHIRT
103	FULL	PHOTO OF LUIS GARCIA EXIT WOUND
104	FULL	PHOTO OF ANTERIOR TRAJECTORY VIEW
105	FULL	PHOTO OF SAGITTAL TRAJECTORY VIEW
106A	ID	PROPERTY FORM 2015
106B	ID	PROPERTY FORM 2015 (REDACTED)
107A	ID	STORAGE RECEIPT
107B	ID	STORAGE RECEIPT (REDACTED)
108	FULL	TERRIAULT LAB REPORT
109	FULL	PHOTO OF WIDE VIEW ROOM FLOOR
110	ID	NOTICE OF DECISION HCSC-N DATED JULY 20, 2018
111	FULL	GLOCK 19 SERIAL NUMBER TSA446
112	FULL	JGO-2
113	FULL	JGO-3
114	FULL	EVIDENCE EXAMINATION REQUEST
115	FULL	PHOTO OF HALLWAY VIEW 1
116	FULL	PHOTO OF HALLWAY VIEW 2
117	FULL	PHOTO OF HALLWAY VIEW 3
118	FULL	EXTRACTION REPORT

DEFENDANT**DESCRIPTION**

A	ID	PHOTO OF BLACK BAG
B	ID	PHOTO OF BLACK BAG CLOSE UP
C	ID	PHOTO OF FRONT DOOR LOOKING OUT
D	ID	PHOTO OF KITCHEN TRASH CLOSE UP
E	ID	PHOTO OF KITCHEN TRASH EMPTIED
F	ID	PHOTO OF JGO-16
G	ID	PHOTO OF JGO-16 CLOSE UP
H	ID	PHOTO OF FRONT LOOK LOOKING IN
I	ID	PHOTO OF HALLWAY
J	ID	PHOTO OF BATHROOM SINK
K	ID	PHOTO OF DROPCLOTH
L-A	ID	PHOTO OF PHONE
L-B	ID	PHOTO OF SCREENSHOT OF PHONE
M-A	ID	PHOTO OF JGO-2
M-B	ID	PHOTO OF JGO-2 WITH PLACARD
N	ID	PHOTO OF BEDROOM FLOOR
O	ID	PHOTO OF KEYS
P-A	ID	PHOTO OF WELCOME MAT
P-B	ID	PHOTO OF WELCOME MAT CLOSE-UP
Q	ID	PHOTO OF DOORBELL
R	ID	PHOTO OF CARPET
S-A	ID	PHOTO OF BOOKSHELF UPPER
S-B	ID	PHOTO OF BOOKSHELF LOWER
T	ID	PHOTO OF SHELVES
U	FULL	PHOTO OF DEFENDANT'S BODY WARRANT PHOTOS
V	ID	PHOTO OF EXTERIOR PORCH SIDE VIEW
W	ID	PHOTO OF BACK OF HOUSE
X	ID	PHOTO OF BACK OF HOUSE WITH POOL
Y	ID	PHOTO OF POOL AND OUTBUILDING
Z	ID	PHOTO OF OUTBUILDING
AA	ID	PHOTO OF SIDE OF HOUSE
BB	ID	PHOTO OF SIDE OF HOUSE WITH CHIMNEY
CC	ID	PHOTO OF SIDE OF HOUSE WITH WALKWAY
DD	ID	PHOTO OF FRONT OF HOUSE WITH WALKWAY
EE	ID	PHOTO OF FRONT OF HOUSE WALKWAY
FF	ID	EVIDENCE EXAMINATION REQUEST 1
GG	ID	EVIDENCE EXAMINATION REQUEST 2
HH	FULL	PHOTOS OF BLACK BAG
II	FULL	PHOTOS OF BACK PORCH
JJ	FULL	PHOTOS OF KITCHEN TRASH
KK	FULL	PHOTOS OF BRANDON'S PHONE

COURT

1	JURY INSTRUCTIONS
2	JUROR QUESTION AND ANSWER MAY 15, 2023 1:30 P.M.

WITNESSES

STATE

W1	DETECTIVE ANDREW PHILLIPS
W2	FRANCES PESTANA
W3	DANIELLE PATALANO
W4	OFFICER MATT MORIN
W5	PATRICIA GARCIA
W6	OFFICER JUSTIN HALLOCK
W7	LT. JAMES O'LEARY
W8	JILL THERRIAULT
W9	RACHAEL MARTINEZ
W10	MARK CASTIGLIONE
W11	ROBERT MERCIER
W12	SGT. STEPHEN MCAULEY
W13	TROOPER TARA ELSEMILLER
W14	BISHOP STANLEY CHOATE
W15	TROOPER TAMARA HESTER
W16	DR. JENNIE DUVAL

WITNESSES

DEFENSE

NONE

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

ROCKINGHAM, SS.

No. 218-2019-CR-1132

STATE OF NEW HAMPSHIRE

v.

Brandon Castiglione

JURY VERDICT FORM

Charge ID #.1805389C alleges that the defendant committed the crime of second degree murder in that he did knowingly cause the death of Luis Garcia by shooting Mr. Garcia through the neck with a firearm, resulting in his death.

Upon this Indictment we find the defendant:

_____ Not Guilty

Guilty

Charge ID #1674110C alleges that the defendant committed the crime of second degree murder in that he did recklessly cause the death of Luis Garcia, under circumstances manifesting an extreme indifference to the value of human life, by shooting Mr. Garcia in the neck with a firearm, resulting in his death.

Upon this Indictment we find the defendant:

_____ Not Guilty

Guilty

If, and only if, you find the defendant Not Guilty on both second degree murder indictments above do you enter findings on the Lesser Included Offenses below:

Upon the Lesser Included Offense of Manslaughter for recklessly causing the death of Luis Garcia, we find the defendant:

_____ Not Guilty

_____ Guilty

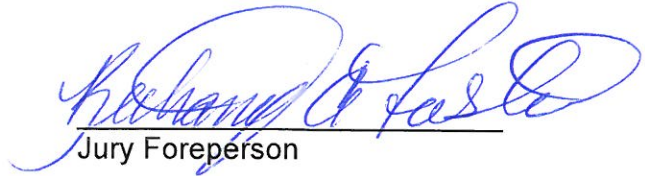
If, and only if, you find the defendant Not Guilty of Manslaughter, do you enter a finding below:

Upon the Lesser Included Offense of Negligent Homicide for negligently causing the death of Luis Garcia, we find the defendant:

_____ Not Guilty _____ Guilty

So Found.

Date: 5/15/2023



Jury Foreperson

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

ROCKINGHAM, SS.

No. 218-2019-CR-01132

STATE OF NEW HAMPSHIRE

v.

Brandon M. Castiglione

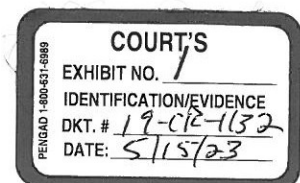
JURY INSTRUCTIONS

I am going to give you some general instructions about the law that applies to this case and as to a few other matters -- which will give you some guidance as you consider the evidence in this case. At the end of the case, I will give you further instructions, and then you will retire to the jury deliberation room to decide your verdict.

It is your duty as jurors to follow all the instructions I 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. Also, you must consider all of the instructions which I give you, regardless of the order in which I give them. You must not single out any particular instruction alone as stating the law. Rather, you should consider each instruction in light of, and together with, the others. You are to give them all the same weight and consideration.

It is up to you to decide the facts in this case. 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 in this case without prejudice, without fear, and without sympathy.

The evidence consists of the testimony under oath of the witnesses and the exhibits. There are certain other matters that you may not consider as evidence. I will discuss those matters first and then I will turn to a discussion of what you may consider.

As you know from the Clerk's reading of the charges, the defendant in this case stands accused of Second Degree Murder. I will explain the legal definition of this crime in more detail at the conclusion of the case.

The fact that the defendant has been arrested and charged is not evidence of guilt. A charge is simply a way of giving the defendant notice of the accusations against him. It is a formal way of accusing the defendant of a crime in order to bring him to trial. You must not consider the fact that the defendant has been charged as evidence of the guilt of the defendant.

The possible punishment of the defendant should not influence your decision. The duty of imposing sentence is for the judge. You should consider the evidence presented and base your verdict only on the evidence without considering the issue of punishment.

You will hear the lawyers discuss the facts and the law in their arguments to you. These arguments, or any statements made by counsel during the course of the trial, are not evidence. The lawyers are not witnesses. Their purpose is to help you understand the evidence and the law. If the lawyers state the law differently from the law as I explain it to you in these instructions, and then you must follow these instructions

and ignore the statements of the lawyers. If the lawyers state the evidence differently from how you recall it, then you should follow your own memory of what the evidence was. That is why you must pay attention to the evidence. You will not get a transcript of the testimony.

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.

I might allow some evidence to be admitted for a limited purpose. You may only use any such evidence for the purpose that I instruct you that it may be used for.

Throughout the trial, I do my best remain fair and impartial, just as you are required to be. If you think that I express or suggest an opinion as to the facts in my rulings, you should ignore such an opinion. It is up to you alone to decide the facts in this case. The role of the judge is to run the trial in a fair and orderly manner, to decide the admissibility of evidence, and give these instructions. My role is very different than yours. Thus if you observe me taking down notes during the testimony, you should not attach any significance to the fact that I am taking notes. I have to keep track of different things during the trial. That is what I use my laptop for.

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 offense with which he has been charged, and the defendant has no

obligation whatsoever to prove his innocence in this matter, and that includes the absolute right not to testify if he so chooses. You are not allowed to draw any unfavorable, adverse or negative inference if defendant chooses not testify in this matter.

Having addressed what you cannot consider in deciding this case, I will now turn to what you should consider. You should consider only the legally admissible evidence; that is, the testimony of the witnesses and the exhibits.

There are two kinds of evidence—direct and circumstantial. Direct evidence is direct proof of a fact, such as the testimony or statements 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 other facts that have been proven. 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 for how long a time.

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 is direct or circumstantial. However, to be sufficient to establish guilt beyond a

reasonable doubt, circumstantial evidence must exclude all other reasonable conclusions. This means that if, from the circumstantial evidence, it is reasonable to arrive at two conclusions, one consistent with guilt and one consistent with innocence, then you must choose the reasonable conclusion consistent with innocence. However, you do not consider each item of circumstantial evidence in isolation. In determining whether all other reasonable 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 the direct evidence. Additionally, this circumstantial evidence rule does not apply to direct evidence. Therefore, if there is a conflict between witnesses who offer direct evidence concerning certain facts, you must decide which witness, if either, to believe. For example, suppose there are two eye witnesses to a crime, and one testifies that the defendant committed the crime and the other testifies that the defendant did not commit the crime. This presents a situation where there is a conflict in the direct evidence. In this situation, you, the jury, must decide which witness, if either, to believe, and whether—based upon all of the evidence—the State has proven the defendant's guilt beyond a reasonable doubt. In sum, you should consider all the direct and circumstantial evidence in the case, as well any reasonable inferences you draw therefrom, in deciding whether the State has proved all the elements of the crime beyond a reasonable doubt.

In reviewing the evidence, you should consider the quality of the evidence and not the quantity. It is not the number of witnesses or quantity of evidence that is important, but the quality of the evidence that is important.

In deciding whether the State has proved the charge against the defendant beyond a reasonable doubt, 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 those 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, or otherwise. In short, you should consider the testimony of each witness and give it the weight you—the jury—think it deserves. You can accept all of what a witness said, you can reject all of it, or you can accept part and reject part. That determination is exclusively yours to make.

I have addressed what you should not consider and what you should consider in rendering a verdict. I am now going to discuss how convinced one way or the other you must be. 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. The

defendant enters this courtroom as an innocent person, and you must consider him to be an innocent person until the State convinces you beyond a reasonable doubt that he is guilty of every element of the alleged offense. If, after all the evidence and arguments, you have a reasonable doubt as to defendant having committed any one or more of the elements of the offense, then you must find him not guilty.

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

After all of the evidence has been submitted and both sides have presented their closing arguments, I will give you further instructions about the law that applies to this case, including the legal definition of the crime(s) alleged in this case and other issues that might arise during the course of the trial. You are to consider the instructions as a whole – both the instructions I gave you now and the instructions I will give you at the end of the case and not single out one particular instruction as stating the law. You will also have a written copy of my entire instructions with you in the jury deliberation room.

Now that the trial in this matter is concluded, I will give your further instructions that apply to this case. At the beginning of the case, I gave you instructions about a number of issues that typically come up during the course of trial. Remember all the instructions I have given you throughout the case should be considered as a whole. So don't single out any particular instruction for special emphasis. As I told you at the outset, you will have a complete written copy of the instructions to have with you in the deliberation room.

You have heard the opinion testimony of expert witnesses in this case. An expert is some-one who has acquired some specialized knowledge, such as scientific or technical knowledge, from experience, training, or education that qualifies the expert to give an opinion as to matters that are not common knowledge. The opinion of the expert may assist you in understanding the evidence or in deciding a fact in issue.

You are not bound by the opinion of an expert. You are free to ignore the expert's opinion if you find that the reasons given in support of the opinion are not sound, or if you find that other evidence outweighs the opinion.

I am going to discuss the definition of the crime upon which you must now deliberate. Both indictments in this case are alternative indictments. Alternative indictments allege different legal descriptions of the same crime.

Charge ID #1805389C alleges that the defendant committed the crime of second degree murder in that he did knowingly cause the death of Luis Garcia by shooting Mr. Garcia through the neck with a firearm, resulting in his death.

In order to convict the defendant of this crime, the State must prove the following elements beyond a reasonable doubt:

1. That the defendant caused the death of another;
2. That he acted knowingly when he did so.

Part of the definition of this crime is that the defendant acted “knowingly.” Under the law, a person acts “knowingly” with respect to conduct or to a circumstance that is a material element of an offense when he is aware that his conduct is of such nature or that such circumstances exist. In the context of this indictment, the State has to prove the defendant was aware that his conduct would cause the death of Luis Garcia. The State does not have to prove that the defendant specifically intended to cause the death.

Charge ID #1674110C alleges that the defendant committed the crime of second degree murder in that he did recklessly cause the death of Luis Garcia, under circumstances manifesting an extreme indifference to the value of human life, by shooting Mr. Garcia in the neck with a firearm, resulting in his death.

In order to convict the defendant of this crime, the State must prove the following elements beyond a reasonable doubt:

1. That the defendant caused the death of another;
2. That the defendant acted recklessly under circumstances that manifested an extreme indifference to the value of human life when he did so.

The term “recklessly” has a specific legal definition in criminal law. A person acts recklessly with respect to a material element of an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that the material element

exists or will result from his conduct. The risk must be of such a nature and degree that, considering the circumstances known to him, its disregard constitutes a gross deviation from the conduct that a law-abiding person would observe in the situation. The key words here are “gross deviation.” If you find that the defendant’s actions were unreasonable or thoughtless, that is not enough. To find that the defendant acted recklessly, you must find that his disregard of the risk was a substantial departure from what a law-abiding person would have done under the same circumstances.

However, with respect to the crime of second degree murder, defendant must not simply act recklessly, but rather must act recklessly under circumstances showing an extreme indifference to the value of human life. This means something more than merely being aware of and consciously disregarding a substantial and unjustifiable risk of death. The risk involved and the disregard must be so blatant as to manifest extreme indifference to the value of human life.

As noted earlier, these are alternative indictments. You are required to deliberate on each charge separately and independently. Your verdict on one charge should not influence your deliberation and verdict on the other charge.

If you find that the defendant is not guilty of the crime of second degree murder in both alternative indictments, then you should go on to consider and decide whether he is guilty of a similar, but less serious, crime. But you only do so if you find him not guilty on both alternative indictments. If you find him guilty of one or both second degree murder indictments, you do not deliberate on the lesser offenses.

A similar, but less serious, crime is different from a more serious crime in one of two ways: either it requires a less serious physical act, or it requires a less serious mental intent.

Here, if you decide that the defendant is not guilty of second degree murder, then you should decide whether the State has proven beyond a reasonable doubt whether he is guilty of the similar, but less serious, crime of manslaughter. In order to convict the defendant of manslaughter, the State must prove beyond a reasonable doubt that:

1. That the defendant caused the death of another person, and
2. That he did so recklessly.

As used in this lesser-included offense, “recklessly” has the same definition as described above, but without the requirement to prove “circumstances that manifested extreme indifference to the value of human life.”

If you find the defendant Not Guilty on the lesser charge of Manslaughter, then you must decide whether the defendant is guilty of the lesser offense of Negligent Homicide. In order to convict the defendant of Negligent Homicide, the State must prove beyond a reasonable doubt:

1. That the defendant caused the death of another person, and
2. That he did so negligently.

The term “negligently” has a specific legal definition in criminal law. A person acts negligently when he fails to become aware of a substantial and unjustifiable risk that his conduct would cause a particular result. The risk must be of such a nature and degree that his failure to become aware of it constitutes a gross deviation from the conduct that a reasonable person would observe in the situation.

Some of you may be familiar with negligence in civil cases where one person sues another for negligently causing harm. The standard for negligence in such cases is lower than the standard for negligence in criminal cases and the two standards should not be confused. Negligence in a civil case is simply the failure to exercise the degree of care that a reasonable person would exercise under the same circumstances. In a criminal case, like this one, proof of negligence requires evidence that the risk was more than an ordinary risk. It requires proof that the risk was substantial and unjustifiable and that the defendant's failure to become aware of the risk was a gross deviation from how a reasonable person would have acted in the same situation.

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 the facts and circumstances in evidence in deciding whether or not the state has proved that the defendant acted knowingly, recklessly, or negligently in this case.

The principles of law that I have given to you are intended to guide you in reaching a fair result in this case, which is important to both the parties in the courtroom and to the court. You are to exercise your judgment and your common sense, as I said before, without passion, without prejudice, without sympathy, but with honesty, understanding, and due deliberation. The law demands that you make a fair decision, based solely on the evidence, your individual evaluations of that evidence, your reason and common sense, and these instructions.

When you have considered and weighed all of the evidence, you must make one of the following findings with respect to each charge that is 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. However, if you find that the State has proved all the elements of the offense charged beyond a reasonable doubt, then you should find the defendant guilty. Keep in mind, you are required to deliberate on each charge separately.

Now that all the evidence is in and the arguments are completed, you will be free to talk about the case in the jury room. In fact, it is your duty to talk with each other about the evidence, and to make every reasonable effort you can to reach a unanimous agreement. Talk with each other, listen carefully and respectfully to each other's views and keep an open mind as you listen to what your fellow jurors have to say.

Should any member of the jury panel leave the deliberation room for any purpose (e.g. to use the bathroom, take a break, etc.), you should stop your deliberations. You should only deliberate when all deliberating jurors are present to hear and participate in the discussion.

Your verdict must be unanimous. All 12 jurors must agree on your verdict. When you have arrived at your verdict, let the bailiff know and you will be returned to the courtroom where the foreperson will render that verdict orally in response to questions that the clerk of court will ask you. To assist you in that process, you will have a verdict form to fill out.

The foreperson—who you will select as your first order of business—should see to it that the jury takes up the issues that are before you. The foreperson should see to it that each juror has a full, a fair, and an adequate opportunity to present his or her views, positions, and arguments with respect to the law and the evidence.

If any questions should arise during your deliberations, the foreperson should write the questions out, hand them to the bailiff and they will be brought to me. I will respond accordingly to those questions.

Thank you for your attention. I will now select the alternates. I want to thank the alternate for their service and, in a moment when we recess, I would like to see you briefly at the bench.

SO ORDERED.

Date: May 15, 2023

A handwritten signature in black ink, appearing to read "D. W. Ruoff". The signature is written in a cursive style with a large initial "D" and "R".

Hon. David W. Ruoff

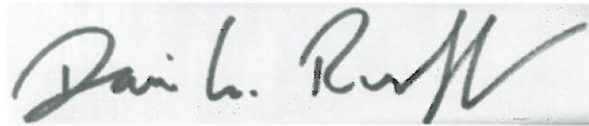
- Please explain "disregard of the risk"
and "gross deviation" in
charge ID #1674110C?

DR 5/15/23

Answer:

"disregard of the risk," in the context of this case, means that the State must prove that the defendant consciously disregard the risk of death. This means that he was aware of the risk of death and ignored it. Keep in mind that the "risk" of death must be substantial and unjustifiable

"gross deviation" refers to the defendants' disregarding (or ignoring of) the risk of death; that the act of ignoring or disregarding the risk was a deviation that was considerably greater than a lack of ordinary care.



Date: May 15, 2023

1:50

Hon. David W. Ruoff
Rockingham County Superior Court

COURT'S
EXHIBIT NO. 2
IDENTIFICATION/EVIDENCE
DKT. # 19 CR 1132
DATE: 5/15/23
PENGAD 1-800-631-6889