

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

THE STATE OF NEBRASKA,

Plaintiff,

v.

AUGUSTINE CAVITTE,

Defendant.

) CASE NO. CR 18-1581

) INSTRUCTIONS TO THE JURY

#4 FILED
IN DISTRICT COURT
DOUGLAS COUNTY NEBRASKA

MAR 20 2019

JOHN M. FRIEND
CLERK DISTRICT COURT

INSTRUCTION NO. 1

Members of the jury, now that you have heard all of the evidence and the arguments of counsel, it is my duty to instruct you in the law.

(1) I am not permitted to comment on the evidence, and I have not intentionally done so. If it appears to you that I have commented on the evidence, during either the trial or the giving of these instructions, you must disregard such comment entirely.

You must not interpret any of my statements, actions, or rulings nor any of the inflections of my voice as reflecting an opinion as to how this case should be decided.

(2) It is my duty to tell you what the law is. It is your duty to decide what the facts are and to apply the law to those facts.

In determining what the facts are you must rely solely upon the evidence in this trial and that general knowledge that everyone has. You must disregard anything else you know about the case.

(3) You must apply the law in these instructions, even if you believe that the law is or should be different.

No one of these instructions contains all of the law applicable to this case. You must consider each instruction in light of all of the others.



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Appendix F

The law demands of you a just verdict. You must not indulge in any speculation, guess, or conjecture. You must not allow sympathy or prejudice to influence your verdict.

(4) The attorneys for the State and the Defendant have a duty to represent the interests of the State and Defendant respectively. In arguing their case, attorneys may draw legitimate deductions and inferences from the evidence.

(5) During this trial I have ruled on objections to certain evidence. You must not concern yourselves with the reasons for such rulings since they are controlled by rules of law. You must not speculate as to possible answers to questions I did not permit to be answered; you must not consider the fact that objections to evidence were overruled. You must disregard all evidence ordered stricken.



A handwritten signature in black ink, appearing to read "John J. Wright".

given

INSTRUCTION NO. 2

As I told you at the beginning of the trial, this is a criminal case in which the State of Nebraska has charged the Defendant with the following crime.

In Count I, the Defendant is charged with Domestic Assault 2nd Degree. The State alleges in substance that:

On or about May 1, 2018, in Douglas County, Nebraska, Augustine Cavitte did then and there, intentionally and knowingly cause bodily injury to Michael Cavitte, an intimate partner, with a dangerous instrument.

The fact that the State has brought this charge is not evidence of anything. The charge is simply an accusation, nothing more.

The Defendant has pleaded not guilty. She is presumed to be innocent. That means you must find her not guilty unless and until you decide that the State has proved her guilty beyond a reasonable doubt

D. Martin
given 6

INSTRUCTION NO. 3

Depending on the evidence, you may return one of two verdicts to Count I of the Information. You may find the Defendant:

- (1) Guilty of Domestic Assault 2nd Degree; or
- (2) Not guilty.

The elements of the crime of Domestic Assault 2nd Degree, as charged in Count I of the Information, are:

1. That the Defendant, on or about May 1, 2018, did intentionally and knowingly cause bodily injury to Michael Cavitte;
2. That the Defendant and the victim are/were intimate partners;
3. That the Defendant did so with a dangerous instrument;
4. That the Defendant did so in Douglas County, Nebraska; and
5. That the Defendant did not act in self-defense.

If you decide that the State proved each element of Domestic Assault 2nd Degree beyond a reasonable doubt then you must find the Defendant guilty. Otherwise, you must find the Defendant not guilty.



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INSTRUCTION NO. 4

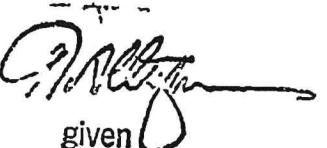
"Intentionally" means willfully or purposely, and not accidentally or involuntarily.

"Knowingly" means with knowledge or perception of facts requisite to make up the crime.

"Bodily injury" means physical pain, illness, or any impairment of physical condition.

"Dangerous instrument" means anything that is used or intended to be used in a way that could produce bodily injury.

"Intimate partner" means a spouse, a former spouse, persons who have a child in common whether or not they have been married or lived together at any time, and persons who are or were involved in a dating relationship.



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INSTRUCTION NO. 5

Intent is an element of the crime charged in the Information. In deciding whether the Defendant acted with intent you should consider her words and acts and all the surrounding circumstances.



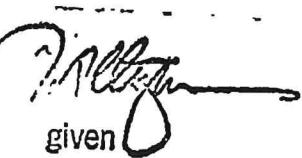
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INSTRUCTION NO. 6

The Defendant acted in self-defense if:

1. Michael Cavitte used or threatened force against the Defendant; and
2. Under the circumstances as they existed at the time, the Defendant reasonably believed that the force she used against Michael Cavitte was immediately necessary to protect the Defendant against any such force used or threatened by Michael Cavitte.

The fact that the Defendant may have been wrong in estimating the danger does not matter so long as there was a reasonable basis for what she believed and she acted reasonably in response to that belief.



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INSTRUCTION NO. 7

The Defendant is not required to prove that she acted in self-defense. It is up to the State to prove that she did not.

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INSTRUCTION NO. 8

A reasonable doubt is one based upon reason and common sense after careful and impartial consideration of all the evidence. Proof beyond a reasonable doubt is proof so convincing that you would rely and act upon it without hesitation in the more serious and important transactions of life. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.



D. McElroy
given

INSTRUCTION NO. 9

The evidence from which you are to find the facts consists of the following:

1. The testimony of the witnesses;
2. The exhibits received in evidence;
3. Any facts that have been stipulated -that is, formally agreed to by the parties- and
4. Any facts that I say you may accept but are not required to accept.

The following things are not evidence:

1. Statements, arguments, and questions of the lawyers for the State and the Defendant;
2. Objections to questions;
3. Any testimony I told you to disregard; and
4. Anything you may have seen or heard about this case outside the courtroom.



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INSTRUCTION NO. 10

There are two kinds of evidence, direct and circumstantial.

Direct evidence is either physical evidence of a fact or testimony by someone who has first-hand knowledge of a fact by means of his or her senses. Circumstantial evidence is evidence of a fact from which another fact logically can be inferred.

A fact may be proved by direct evidence alone, by circumstantial evidence alone, or by a combination of the two.



A handwritten signature in black ink, appearing to read "J. C. St. John".

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INSTRUCTION NO. 11

A witness who has special knowledge, skill, experience, training, or education in a particular area may testify as an expert in that area. You determine what weight, if any, to give to an expert's testimony just as you do with the testimony of any other witness. You should consider the expert's credibility as a witness, the expert's qualifications as an expert, the sources of the expert's information, and the reasons given for any opinions expressed by the expert.



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INSTRUCTION NO. 12

You are the sole judges of the credibility of the witnesses and the weight to be given to their testimony. In determining this, you may consider the following:

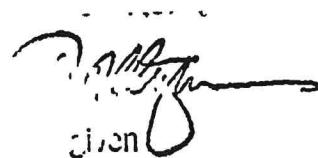
1. The conduct and demeanor of the witness while testifying;
2. The sources of information, including the opportunity for seeing or knowing the things about which the witness testified;
3. The ability of the witness to remember and to communicate accurately;
4. The reasonableness or unreasonableness of the testimony of the witness;
5. The interest or lack of interest of the witness in the result of this case;
6. The apparent fairness or bias of the witness;
7. Any previous statement or conduct of the witness that is consistent or inconsistent with the testimony of the witness at this trial; and
8. Any other evidence that affects the credibility of the witness or that tends to support or contradict the testimony of the witness.



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INSTRUCTION NO. 13

During the trial, certain evidence was presented to you by stipulation of counsel. Such evidence is entitled to the same fair and impartial consideration that you would give the same testimony had the witnesses appeared personally at this trial.


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INSTRUCTION NO. 14

There has been evidence that Defendant, Augustine Cavitte, made a statement to law enforcement officers including Detective Derrick Kreikemeier and Sergeant Cody Baines, and another unknown individual. You may rely on any such statement only if you decide beyond a reasonable doubt with regard to each statement:

1. That the Defendant made the statement; and
2. That the Defendant understood what she was saying; and
3. That the statement was freely and voluntarily made under all the circumstances surrounding its making.

If you decide that the State did not prove these three things beyond a reasonable doubt then you must disregard that particular statement even if you think it is true.



A handwritten signature in black ink, appearing to read "P. B. B." followed by a stylized surname.

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INSTRUCTION NO. 15

Your duty is to decide whether the Defendant is guilty or not guilty of the crime charged. My duty is to decide what happens to the Defendant if you decide that she is guilty. You must make your decision without considering what will happen to the Defendant.


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INSTRUCTION NO. 16

Throughout the course of the trial you have been allowed to take notes of the testimony. You may take your notes into the jury room for use in your deliberations. Remember, however, your notes are not evidence. The court reporter is charged with the task of keeping the official record of all exhibits received into evidence during the trial. At the close of the trial, she will deliver all exhibits you are to consider in your deliberations.

Your notes should be used only as aids to your memory. You should not give your notes precedence over your independent recollection of the evidence. You should rely on your own independent recollection of the proceedings, and you should not be influenced by the notes of other jurors. Your notes are not entitled to any greater weight than each juror's recollection or impression of the testimony given during this trial. After you have completed your deliberations, your notes will be destroyed.

[Signature]
given

INSTRUCTION NO. 17

This case is now ready to be submitted to you for your consideration. Any verdict you reach must be unanimous.

You must reach your verdict based only on the evidence presented to you during this trial, within the four walls of this courtroom, and that general knowledge that everyone has.

While you are in the jury room, you may not use any electronic devices at all.

No matter where you are – in the jury room or anywhere else – and until after you are discharged from this trial and I tell you that it is alright to do so, do not talk to anyone about this case except your fellow jurors. Do not use any reference materials or any electronic devices to obtain information about this case. Do not visit any of the places mentioned in this case.

When you get to the jury room, the first thing you must do is to select one of you to be the presiding juror, the person who will preside over your deliberations. It is the job of the presiding juror to see that a verdict is fairly reached and that each juror has a chance to speak fully and freely on the issues in this case.

It is your duty to determine what the facts are. You must approach this task with open minds – consulting with one another, freely and honestly exchanging your views concerning this case, and respectfully considering the views of the other jurors. Do not hesitate to reexamine your own views and to change your mind if you are persuaded that you should. But do not surrender your honest conviction as to the weight or effect of the evidence solely because of the opinion of the other jurors or for the mere purpose of returning a verdict.

If you do not agree on a verdict by 4:30 p.m. today, you may separate and return

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for further deliberation at 9:00 a.m. tomorrow. If you do separate, then, during the time that you separate, you are not allowed to discuss this case with anyone, even another juror.

In the jury room, you will have these instructions and the exhibits in this case and the forms on which you are to record your verdict.

If you have any questions, please write them out and give them to the bailiff, who will give them to me. I may need to assemble the attorneys and confer with them before I respond.

While you are in the jury room, do not attempt to contact anyone outside of the jury room on your own. Do not call anyone, text anyone, or use Facebook, Twitter, MySpace, or any other social network to communicate with anyone. If you need to give a message to anyone outside of the jury room, let the bailiff know.

This case is submitted to you at 10:32 Am., on this 20 day of March, 2019, at which time your deliberations are deemed to commence.

BY THE COURT:


Hon. Thomas A. Otepka
Douglas County District Court Judge


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