DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

CRAIG BASSETT,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D2024-1319

[August 15, 2024]

Appeal of order denying rule 3.800 motion from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Cymonie S. Rowe, Judge; L.T. Case No. 502004CF002150AXXX.

Craig Bassett, South Bay, pro se.

No appearance required for appellee.

PER CURIAM.

Affirmed.

MAY, LEVINE and CONNER, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.

APPENDIX "A"

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT

CRAIG BASSETT,
Appellant,

L.T. No. 502004CF002150AXXX
Case No. 4D2024-1319

vs.

STATE OF FLORIDA,
Appellee, /

MOTION FOR WRITTEN OPINION AND CERTIFICATION OF QUESTION OF GREAT PUBLIC IMPORTANCE ON UNADDRESSED POINTS

Appellant, Craig Bassett, pursuant to Rule 9.330 of Florida Rules of Appellate Procedure, seeks issuance of a written opinion on the unaddressed points challenging a six-person jury for a life felony, as well as a certification of a question of great public importance from the per curiam decision rendered August 15, 2024. Rehearing in the form of a written opinion or certification is necessary so the Florida Supreme Court can revisit the Constitutional Authority requiring twelve-person juries for all life felonies. The Constitutional parameters of jury composition in Criminal Cases is a question of great public importance that was recently addressed by United States Supreme Court Justice Gorsuch in his dissenting opinion of Cunningham V. Florida, 602 U.S. ____ 2024;" If there are not yet four votes on this court to take up the question whether Williams should be overruled, I can only hope some day there will be. In the mean time, nothing prevents the people of Florida from revising their jury practice to ensure no government

in this country may send a person to prison without the unanimous assent of twelve of his peers. If we will not presently shoulder the burden of correcting our own mistakes they have the power to do so. For, no less than this Court, American people serve as guardians of our endearing Constitution."

If Justice Gorsuch, and the other conservative originalists on the court, knew that the people of Florida used their power to assure their Sixth Amendment rights were protected by enacting a jury penalty instruction law, but the State Supreme Court abrogated that law by amending their procedural Rule, or that the State judicial system of trying criminal offenses had contradicting procedural rules, they most assuredly would have voted to accept certiorari in order to resolve the contradiction between those Rules.

Whether the Sixth and Fourteenth Amendments of the United States Constitution guarantee the right to a trial by a twelve-person jury when charged with a life felony is a fundamental question that is ripe for review by the Florida Supreme Court under the conditions presented. The reasoning for abrogating the penalty instruction law was solely to discourage jurors from engaging their pardon powers. The Florida Supreme Court has determined that defendants have a fundamental right to the availability of a jury pardon, and that the failure to empower the jury

to accomplish nullifications is treated as a structural defect that necessarily vitiates the defendant's right to a fair trial; Haygood V. State, 109 So3d 735 (Fla. 2013). Yet, the jury is censored from the penalty instruction law and told; "1) They cannot use sympathy when deciding guilt or innocense. 2) They do not have the right to violate the laws that we all share. 3.) They must obey the laws as the judge explains them." When a trial judge inserts himself this deeply into the province of the jury the defendants right to an impartial jury under the 6th amendment has been abridged.

This case represents a manifest injustice based upon the appellants claim of actual innocense. The only evidence produced at trial was the testimonial credibility of a hostile victim witness. There was no other proof that a crime occurred. The prosecutor passionately assured the jury that the law allowed them to find guilt solely on the victims testimony. The judge instructed the jury that they could not use sympathy and must follow the law. Even though that law states the jury must be given a penalty instruction, the Rule says the judge must not. The rule discourages the jurors from using their power to pardon. This appellant was condemned to life in prison without parole for allegedly violating the sensitivities of an Eleven year-old girl. He is imprisoned because he could not disprove an unproven fact. (In re Winship, 90 S.Ct. 1068 (1970).)

When a manifest injustice occurs it is the responsibility of the Court to correct the injustice if it can, regardless of procedural bars. (Baker v. State, 878 So2d 1236 (Fla. 2004) at 1246.) The

writ of Habeas Corpus is enshrined in our constitution to be used as a means to correct manifest injustices and its availability for use when all other remedies have been exhausted served our society well over many centuries. This court will, of course, remain alert to claims of manifest injustice, as will all Florida Courts. (Jamason v. State, 447 So2d 892 (Fl. 4 DCA 1983).) If it appears to a court of competent jurisdiction that a man is being illegally restrained of his liberty it is the responsibility of the court to brush aside formal technicalities and issue the appropriate orders as will do just justice. (Anglin v Mayo, 88 So2d 918 (Fl. 1956) at 919.)

This cause was filed as a Rule 3.800 motion but should have been treated as a Rule 3.850 CM2 habeas Corpus and ruled on accordingly. (Adams v State, 957 So2d 1183 (Fla 3 DCA 2006); rev. denied, 970 So2d 343 (Fla 2007).); When the failure to grant relief would result in a manifest injustice. (Suarez Ortega v Rijals de Suarez, 465 So2d 607 (Fl. 3 DCA 1985).) Habeas Corpus: Ch. 79 F.S.; Rule 1.630 Fla. R. Crim. P.; if a complaint states prima facie grounds for relief, the trial court must issue a writ requiring response from restraining authority. § 79.01 Fla. Stat. Fla. R. Crim. P. 1.630 (d)(5); (Baird v. Wolson, 687 So2d 254 (Fla. 1 DCA 1996); Smith v. Kearney, 802 So2d 387 (Fla. 4 DCA 2001) at 389). However, the lower court did rule at the merits of the claims. This court now has the jurisdiction to review the lower courts' answer and analysis of the twelve person jury, and penalty instruction abrogation validity. Does the separation of powers forbid an enacted procedural law

abrogation without finding it unconstitutional? (U.S. V. Butler 297 U.S. 1 (1936).)

The states have always enjoyed wide leeway in dividing responsibility between judge and jury in criminal prosecutions. (Spencer v. Texas, 385 U.S. 554, (1960) at 560). If a state enacts a law requiring jury notification of the penalty to, in effect, maintain a link between contemporary community values and the penal system, or because juries are more likely to act with compassion and understanding than the judge, nothing in the Due Process Clause of the 14th Amend. intrudes upon that choice. (Witherspoon V. Illinois, 391 U.S. 510, (1968) at 519 n.15.) The punishment should always fit the offender and not the crime. (Williams v. New York, 337 U.S. 241, (1949) at 247).

SUMMARY OF ARGUMENT

The people of Florida deserve a Judicial Branch of Government that will jealously support the Constitutional protections to their liberty, not bend them to support the state in its prosecution of Criminal defendants. When the state enacts a law that allows for the arrest, detention, and trial with no physical evidence a crime even occurred, the people need more due process of law, not less. The role of the appellate court is not to reweigh the evidence to arrive at their own determination of the best outcome. As Robert Bork stated in his best seller "The Tempting of America", Appellate Court judges have a duty to perform Constitutional based, not results driven, legal analysis. The appellate

court's role is to ensure, consistent with fundamental principles of Constitutional law, that the jury is correctly instructed on the law so that it can ultimately make the determination based upon the facts placed into evidence, about what crimes were committed, to ensure that the jury is provided with a complete and accurate accounting of the applicable law prior to rendering its verdict.

Florida's jury pardon doctrine is a judicial creation that is radically flawed. (Haygood V. State, 109 So3d 735 (Fla. 2013).) In effect, the Florida Supreme Court determined that defendants have a fundamental right to the availability of a jury pardon. Although the defendant does not enjoy the right to an actual pardon, the jury certainly has the right to give it. The failure to empower the jury to accomplish even a partial jury nullification is treated as a structural defect that necessarily vitiates the defendants right to a fair trial, even if nothing in the Florida Constitution, the Florida Statutes, or the Florida Rules of Criminal Procedures supports the recognition of such a right of access to a partial jury nullification. (Romax V. State, 345 So2d 719 (Fla. 1977).) The only protections the people have against government oppression is the jury box and the ballot box. The jurors ability to harness the unbridled powers of over-indicting bully prosecutors is manifested in their refusal to convict for crimes that carry unwarranted punishments; Florida jurors are censored to discourage this. And when enacted Rules of Court are abrogated through judicial mandate the people are deprived of their powers of self-protection. The power Justice Gorsuch articulated has been compromised.

A. THIS COURT SHOULD ISSUE WRITTEN OPINION ON THE TWELVE PERSON JURY ISSUE

A written opinion will provide a legitimate basis for the Florida Supreme Court review of an express construction of a United States Constitution provision as authorized by Fla. R. App. Proc. 9.030 (a)(2)(A)(ii). As argued in appellate briefs, Florida precedent allowing a six-person jury in non-murder capital cases, (State v. Hogan, 451 So.2d 844, 845 (Fla. 1984)), after the court ruled to abrogate the jury penalty instruction law, (§18.10(c); In Re: 3.390(a), 416 So.2d 1126 (Fla. 1982); 462 So.2d 386 (Fla. 1984)), is incompatible with prevailing United States Supreme Court precedent and is inconsistent with the purpose and meaning of the Sixth and Fourteenth Amendments to the United States Constitution, thus providing timely and justified opportunity for Florida Supreme Court review. (See: Justice Gorsuch's dissenting opinion in Cunningham, Supra, and Hall v State, 853 So.2d 546, 547 (Fla. 1 DCA 2003); Appellate court certified whether defendant entitled to twelve-person jury as a question of great public importance. Rev. denied, 865 So.2d 480 (Fla. 2003))

The recent United States Supreme Court challenges did not ask the court to consider the legitimacy of the judicial abrogation of penalty instructions. This affects the legality of a reduced jury size and the court's decision to accept jurisdiction. The effect of the judicial branch ability to abrogate enacted Rules of Court is the further degradation of the constitutional principles of separation of powers. The people of Florida do not enjoy the power of electing legislators to enact controlling rules of court.

A written opinion on this important question will allow the Florida Supreme Court to evaluate precedent and practical issues arising from a six-person jury system that discourages jurors from using their pardon powers. It negates the peoples power to prevent unwarranted mandatory life sentences that deplete finite state resources. The time to grapple with the constitutional validity of the Williams' legacy in the wake of Gorsuch's directive is
— NOW —

B. IN THE ALTERNATIVE, THIS COURT SHOULD CERTIFY TO THE FLORIDA SUPREME COURT A QUESTION OF GREAT PUBLIC IMPORTANCE

The following questions of great public importance should be certified to the Florida Supreme Court:

(1) Was the fairness of six-person jury trials in life felony cases vitiated when the jury instruction Law 918.10 (c) was abrogated?

This appeal involves issues of great public importance to the fundamental principles of Constitutional Construction and definition of what is meant by a jury trial. The Florida Supreme Court should be given an opportunity to revisit Williams v. Florida, 399 U.S. 78 (1970) in light of Justice Gorsuch's dissenting opinion in Cunningham and the judicial abrogation of legislatively enacted Rules of Court without finding them unconstitutional. (U.S. v. Butler, 297 U.S. 1 (1936).) Statute 918.10 (c) clearly states that the trial judge must instruct the jury on the penalty for the offenses charged. When faced with an unambiguous

statute, the courts of this state are without power to construe an unambiguous statute in a way that would extend, modify, or limit, its express terms, or its reasonable or obvious implications. To do so would be an abrogation of legislative power. This principle is not a rule of grammar, it reflects the constitutional obligation of the judiciary to respect the separation of powers. (State V. Rife, 789 So2d 288 (Fla 2001) at 292.) Therefore, the Florida Supreme Court should be given the opportunity to hold the constitutional Article invoked, separation of powers, next to the judicial abrogation of the penalty instruction and decide;

(2) Did the judicial abrogation of the penalty instruction law violate separation of powers in light of the Florida Supreme Court's reasoning in State V. Rife?

Our society and our constitution generally have made the judgment that the measure of a fair trial is its adherance to stated processes. The term "FAIR TRIAL" does not appear in the Constitution, but, it generally means a trial before an impartial judge, an impartial jury, and in an atmosphere of judicial calm. Being impartial means being indifferent between the parties. (See: Goldstein, 63 F2d 613, and Sunderland, 19 F2d at 216). The fair trial is still the search for truth, with the appropriate pro-defendant discount where the defendant runs the risk of the deprivation of his liberty, a result not taken lightly in a free society. But that search for truth is grounded firmly within the realm of the jury.

When trial judges inject themselves too far into the province of the jury they corrupt due process. Once the jury is duly sworn and seated it is within their sole discretion whether or not to surrender a defendant to the judge for punishment. Jurors cannot be forced to render verdicts against their conscience. (Sparf v. U.S. 156 U.S. 51 (1895). In this case the defendant asked for a penalty instruction and was told it was against the Rules. The conscience of his jury was never tapped.

Therefore, Appellant respectfully requests this court to either issue a written opinion or certify the questions presented to be of great public importance.

Respectfully Submitted,

Craig Bassett W26112,
South Bay Correctional Facility,
600 U.S. HWY. 27 South
South Bay, FL 33493

CERTIFICATE OF SERVICE

I Hereby Certify that this motion has been furnished via regular U.S. Mail to the Florida Attorney General, 1515 N. Flagler Dr. #900, W.P.B. FL. 33401 on this 23 day of August, 2024.

Craig Bassett W26112,

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401

September 20, 2024

CRAIG BASSETT, Appellant(s) v. STATE OF FLORIDA, Appellee(s).	**CASE NO. - 4D2024-1319** L.T. No. - 502004CF002150AXXX

BY ORDER OF THE COURT:

ORDERED that Appellant's August 28, 2024 motion for written opinion and certification is denied.

Served:
Crim App WPB Attorney General
Craig Bassett

KR

I HEREBY CERTIFY that the foregoing is a true copy of the court's order.

Lonn Weissblum
LONN WEISSBLUM, Clerk
Fourth District Court of Appeal
4D2024-1319 September 20, 2024

APPENDIX "B"

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

FELONY DIVISION: U
CASE NO.: 50-2004-CF-002150-AXXX-MB

STATE OF FLORIDA,

vs.

CRAIG BASSETT,
Defendant.
_____/

ORDER DENYING DEFENDANT'S MOTION TO CORRECT ILLEGAL SENTENCE AND DIRECTING THE CLERK OF COURT TO CLOSE THE CASE

THIS CAUSE came before the court on Craig Bassett's ("Defendant") pro se Motion to Correct Illegal Sentence ("Motion") (DE #290) filed on February 2, 2024, pursuant to Florida Rule of Criminal Procedure 3.800(a). The court has reviewed Defendant's Motion, the court file, and is otherwise fully advised in the premises.

STATEMENT OF THE CASE AND FACTS

Defendant was charged by Amended Information with Sexual Battery on Person Less than 12 Years of Age (Count One), Lewd or Lascivious Molestation (Count Two), and Lewd or Lascivious Molestation (Count Three). (Ex. "A," Amended Information). On October 21, 2004, the jury returned a guilty verdict on all counts as charged in the Information. The jury specifically found as to Count Two that Defendant did intentionally touch in a lewd and lascivious manner [the victim's] genitals or genital area or buttocks or the clothing covering them and that Defendant did intentionally in a lewd and lascivious manner force or entice [the victim] to touch his penis. (Ex. "B," Verdict). The court adjudicated Defendant guilty and on December 6, 2004, sentenced Defendant to life imprisonment in the Department of Corrections ("DOC") on Count One, with credit for 287 days, to run concurrent with Counts Two and Three, thirty (30) years imprisonment

APPENDIX "C"

in the DOC on Count Two, with credit for 287 days, to run concurrent with Counts One and Three, and thirty (30) years imprisonment in the DOC on Count Three, with credit for 287 days, to run concurrent with Counts One and Two. Additionally, the court declared Defendant a sexual predator. (Ex. "C," Judgment; Ex. "D," Sentence Orders; Ex. "E," Order Declaring Defendant a Sexual Predator). Defendant appealed his convictions and sentences and on April 5, 2006, the Fourth District Court of Appeal affirmed Defendant's convictions and sentences. (Ex. "F," Mandate; Opinion). Currently pending before the court is Defendant's Motion arguing his sentence is illegal.

LEGAL ANALYSIS AND RULINGS

Under Rule 3.800(a), it is the defendant's burden "to demonstrate as a matter of law that the sentence actually imposed could not have been lawfully imposed under any set of circumstances consistent with the applicable law and the existing court records in this case." *See Smart v. State*, 124 So. 3d 347, 349 (Fla. 2d DCA 2013) (citing *Carter v. State*, 786 So. 2d 1173, 1181 (Fla. 2001)). If it is possible "to impose a particular sentence, then the sentence will not be illegal within rule 3.800(a) even though the judge erred in imposing it." *See Blakley v. State*, 746 So. 2d 1182, 1186-87 (Fla. 4th DCA 1999). A rule 3.800(a) motion is not a vehicle to determine whether sentencing comported with due process. *See Calixte v. State*, 162 So. 3d 283, 284 (Fla. 4th DCA 2015).

In his Motion, Defendant argues the court illegally sentenced him to a mandatory life sentence because he was tried by a six person jury rather than a twelve person jury, as required by the Sixth and Fourteenth Amendments to the United States Constitution. Defendant's argument is not cognizable in a rule 3.800(a) motion. Even if Defendant's argument was cognizable, Defendant's Motion would be denied. Section 913.10, Florida Statutes (2003), and Florida Rule

of Criminal Procedure 3.270 (2003) state that "[t]welve persons shall constitute a jury to try all capital cases, and six persons shall constitute a jury to try all other criminal cases." Sections 794.011(2)(a) and 775.082(1), Florida Statutes (2003), provide that sexual battery on a person less than 12 years of age by a person 18 years of age or older is a capital felony punishable by death or by life imprisonment. However, at the time Defendant committed sexual battery, although sexual battery was labeled a "capital felony," it was not a "capital case" under section 913.10, Florida Statutes, because at that time, sexual battery was not punishable by death. *See Morales-Alaffita v. State*, 376 So. 3d 791, 792 (Fla. 2d DCA 2023) (quoting *Phillips v. State*, 316 So. 3d 779, 786 (Fla. 1st DCA 2021)). Thus, Defendant's argument that his life sentence is illegal because he was tried by a six-person jury must be denied.

Defendant also claims his sentence is illegal because the court failed to instruct the jury on the pending punishment. Defendant's claim of trial error is not cognizable under rule 3.800(a). *See Steward v. State*, 931 So. 2d 133, 134 (Fla. 2d DCA 2006) (stating that "claims of trial court error and insufficiency of the evidence should have been raised on direct appeal").

To the extent Defendant's Motion could be construed pursuant to rule 3.850, Defendant's Motion is untimely. Florida Rule of Criminal Procedure 3.850(b) provides in pertinent part:

> **(b) Time Limitations.** A motion to vacate a sentence that exceeds the limits provided by law may be filed at any time. No other motion shall be filed or considered pursuant to this rule if filed more than 2 years after the judgment and sentence become final unless it alleges that
>
> (1) the facts on which the claim is predicated were unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of due diligence, and the claim is made within 2 years of the time the new facts were or could have been discovered with the exercise of due diligence, or
>
> (2) the fundamental constitutional right asserted was not established within the period provided for herein and has been held to apply retroactively, and the claim is made within 2 years of the date of the mandate of the decision announcing the retroactivity, or

> (3) the defendant retained counsel to timely file a 3.850 motion and counsel, through neglect, failed to file the motion. A claim based on this exception shall not be filed more than 2 years after the expiration of the time for filing a motion for postconviction relief.

The two-year time limitation for filing motions for postconviction relief does not begin to run until the defendant's judgment and sentence become final. A judgment and sentence become "final," for purposes of the two-year time limitation, when direct appellate proceedings have concluded and the appellate court issues a mandate (returning jurisdiction to the sentencing court), or, if no direct appeal is filed, thirty (30) days after the trial court enters its judgment and sentence orders. *Earls v. State*, 958 So. 2d 1153 (Fla. 1st DCA 2007); *Mullins v. State*, 974 So. 2d 1135 (Fla. 3d DCA 2008). Defendant's judgment and sentence became final when the Fourth District Court of Appeal issued its mandate on June 2, 2006. Defendant then had two years from that date, or until June 2, 2008, to file a timely motion for postconviction relief. Because Defendant's Motion was provided to prison officials for mailing on January 31, 2024, and filed on February 2, 2024, his Motion is untimely and procedurally barred. Fla. R. Crim. P. 3.850(b).

In his Motion, Defendant attempts to circumvent the time limitations of rule 3.850 by noting that the United States Supreme Court recently held that convictions by six-person juries violate the Sixth and Fourteenth Amendments to the United States Constitution. Defendant appears to be relying on *Ramos v. Louisiana*, 140 S.Ct. 1390 (2020), though *Ramos* did not specifically hold that six-person juries are unconstitutional. The Fourth District Court of Appeal discussed *Ramos* in *Guzman v. State*, 350 So. 3d 72 (Fla. 4th DCA 2022), holding that it was bound by *Williams v. Florida*, 399 U.S. 78 (1970), which held that six-person juries are constitutionally permissible. Although the defendant in *Guzman* has filed a petition for writ of certiorari to the United States Supreme Court, the United States Supreme Court has not stated whether it will hear the case. Accordingly, Defendant has not satisfied rule 3.850(b)(2)'s requirement that "the

fundamental constitutional right asserted...has been held to apply retroactively, and the claim is made within 2 years of the date of the mandate of the decision announcing the retroactivity." Fla. R. Crim. P. 3.850(b)(2).

Accordingly, it is hereby

ORDERED that Defendant's Motion to Correct Illegal Sentence (DE #290), filed on February 2, 2024, is **DENIED**. Defendant may appeal this Order within thirty (30) days of its rendition.

There being no further business before the Court in this case, the Clerk is hereby directed to close the case.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida.

502004CF002150AXXXMB 04/16/2024
15TH JUDICIAL CIRCUIT
Cymonie S. Rowe Circuit Judge
ADMINISTRATIVE OFFICE OF THE COURT

502004CF002150AXXXMB 04/16/2024
Cymonie S. Rowe
Circuit Judge

Name	Address	Email
CRAIG BASSETT	DOC# W26112 SOUTH BAY C.F. 600 U.S. HWY 27, SOUTH SOUTH BAY, FL 33493-2233	
STATE ATTORNEY	401 N DIXIE HWY WEST PALM BEACH, FL 33401	FELDIVU@sa15.org; e-postconviction@sa15.org

Supreme Court of Florida

FRIDAY, OCTOBER 18, 2024

Craig Bassett,
Petitioner(s)
v.

State of Florida,
Respondent(s)

SC2024-1481
Lower Tribunal No(s).:
4D2024-01319;
502004CF002150AXXX

Petitioner's Notice to Invoke Discretionary Jurisdiction, seeking review of the order or opinion issued by the 4th District Court of Appeal on August 15, 2024, is hereby dismissed. This Court lacks jurisdiction to review an unelaborated decision from a district court of appeal that is issued without opinion or explanation or that merely cites to an authority that is not a case pending review in, or reversed or quashed by, this Court. *See Wheeler v. State*, 296 So. 3d 895 (Fla. 2020); *Wells v. State*, 132 So. 3d 1110 (Fla. 2014); *Jackson v. State*, 926 So. 2d 1262 (Fla. 2006); *Gandy v. State*, 846 So. 2d 1141 (Fla. 2003); *Stallworth v. Moore*, 827 So. 2d 974 (Fla. 2002); *Harrison v. Hyster Co.*, 515 So. 2d 1279 (Fla. 1987); *Dodi Publ'g Co. v. Editorial Am. S.A.*, 385 So. 2d 1369 (Fla. 1980); *Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980).

No motion for rehearing or reinstatement will be entertained by the Court.

A True Copy
Test:

SC2024-1481 10/18/2024

John A. Tomasino
Clerk, Supreme Court

APPENDIX "D"

3.10 RULES FOR DELIBERATION

These are some general rules that apply to your discussion. You must follow these rules in order to return a lawful verdict:

1. You must follow the law as it is set out in these instructions. If you fail to follow the law, your verdict will be a miscarriage of justice. There is no reason for failing to follow the law in this case. All of us are depending upon you to make a wise and legal decision in this matter.

2. This case must be decided only upon the evidence that you have heard from the testimony of the witnesses and have seen in the form of the exhibits in evidence and these instructions.

3. This case must not be decided for or against anyone because you feel sorry for anyone, or are angry at anyone.

4. Remember, the lawyers are not on trial. Your feelings about them should not influence your decision in this case.

5. Your duty is to determine if the defendant has been proven guilty or not, in accord with the law. It is the judge's job to determine a proper sentence if the defendant is found guilty.

6. Whatever verdict you render must be unanimous, that is, each juror must agree to the same verdict.

7. Your verdict should not be influenced by feelings of prejudice, bias or sympathy. Your verdict must be based on the evidence, and on the law contained in these instructions.

APPENDIX E

3.13 SUBMITTING CASE TO JURY

In just a few moments you will be taken to the jury room by the bailiff. The first thing you should do is choose a foreperson who will preside over your deliberations. The foreperson should see to it that your discussions are carried on in an organized way and that everyone has a fair chance to be heard. It is also the foreperson's job to sign and date the verdict form when all of you have agreed on a verdict and to bring the verdict form back to the courtroom when you return.

During deliberations, jurors must communicate about the case only with one another and only when all jurors are present in the jury room. You are not to communicate with any person outside the jury about this case. Until you have reached a verdict, you must not talk about this case in person or through the telephone, writing, or electronic communication, such as a blog, twitter, e-mail, text message, or any other means. Do not contact anyone to assist you during deliberations. These communications rules apply until I discharge you at the end of the case. If you become aware of any violation of these instructions or any other instruction I have given in this case, you must tell me by giving a note to the bailiff.

If you need to communicate with me, send a note through the bailiff, signed by the foreperson. If you have questions, I will talk with the attorneys before I answer, so it may take some time. You may continue your deliberations while you wait for my answer. I will answer any questions, if I can, in writing or orally here in open court.

Your verdict finding the defendant either guilty or not guilty must be unanimous. The verdict must be the verdict of each juror, as well as of the jury as a whole.

During the trial, items were received into evidence as exhibits. You may examine whatever exhibits you think will help you in your deliberations.

These exhibits will be sent into the jury room with you when you begin to deliberate.

In closing, let me remind you that it is important that you follow the law spelled out in these instructions in deciding your verdict. There are no other laws that apply to this case. Even if you do not like the laws that must be applied, you must use them. For two centuries we have lived by the Constitution and the law. No juror has the right to violate rules we all share.