

IN THE SUPERIOR COURT OF
STATE OF

STATE OF

v.

Defendant.

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CRIMINAL CASE NO.

JURY CHARGE

1.10.10 Indictment, P's 1

You are considering the case of the State of versus

The grand jury has indicted the defendant with the offenses of Aggravated Battery and two counts of Simple Battery, Family Violence. The Court has resolved Count 2 and the Jury does not have to consider that Count.

The indictment reads as follows:

(The Court will cover the allegations of the indictment.)

1.10.20 Issue and Plea of Not Guilty, P's 2 & D's 1

To this indictment the defendant has entered a plea of not guilty. The indictment and the plea form the issue that you are to decide.

Neither the indictment nor the plea of not guilty should be considered as evidence. They are merely the means by which this case is brought to you.

1.20.10 Presumption of Innocence; burden of proof; reas. doubt, P's 3 & D's 2

The defendant is presumed to be innocent until proven guilty. The defendant enters upon the trial of the case with a presumption of innocence in his favor. This presumption remains with the defendant until it is overcome by the State with evidence that is sufficient to convince you beyond a reasonable doubt that the defendant is guilty of the offenses charged.

No person shall be convicted of any crime unless and until each element of the crime is proven beyond a reasonable doubt.

The burden of proof rests upon the State to prove every material allegation of the indictment and every essential element of the crimes charged beyond a reasonable doubt.

There is no burden of proof upon the defendant whatsoever, and the burden never shifts to the defendant to introduce evidence or to prove innocence.

However, the State is not required to prove the guilt of the accused beyond all doubt or to a mathematical certainty. A reasonable doubt means just what it says. A reasonable doubt is a doubt of a fair-minded, impartial juror honestly seeking the truth. A reasonable doubt is a doubt based upon common sense and reason. It does not mean a vague or arbitrary doubt but is a doubt for which a reason can be given, arising from a consideration of the evidence, a lack of evidence, or a conflict in the evidence.

After giving consideration to all of the facts and circumstances of this case, if your minds are wavering, unsettled, or unsatisfied, then that is a doubt of the law, and you must acquit the defendant. But, if that doubt does not exist in your minds as to the guilt of the accused, then you would be authorized to convict the defendant.

If the State fails to prove the defendant's guilt beyond a reasonable doubt, it would be your duty to acquit the defendant.

1.20.30 Jury, Judges of law and facts, P's 4

Members of the Jury, it is my duty and responsibility to determine the law that applies to this case and to instruct you on that law. You are bound by these instructions. It is your responsibility to determine the facts of the case from all of the evidence presented. Then you must apply the law I give you in this charge to the facts as you find them to be.

1.30.10 Evidence; Generally, P's 5

I charge you that your oath requires that you will decide this case based on the evidence. Evidence is the means by which any fact that is put in issue is established or disproved. Evidence includes all of the testimony of the witnesses and any exhibits admitted during the trial. Evidence does not include the

indictment, the plea of not guilty, the opening or closing remarks of the attorneys, or the questions asked by the attorneys.

1.30.20 Direct/Circumstantial Evidence – Short Version, P’s 6 & D’s 12

Evidence may be either direct or circumstantial or both.

In considering the evidence, you may use reasoning and common sense to make deductions and reach conclusions. You should not be concerned about whether the evidence is direct or circumstantial. “Direct evidence” is the testimony of a person who asserts that he or she has actual knowledge of a fact such as an eyewitness or by personally observing or otherwise witnessing that fact.

“Circumstantial evidence” is proof of a set of facts and circumstances that tend to prove or disprove another fact by inference, that is, by consistency with such fact or elimination of other facts. There is no legal difference in the weight you may give to either direct or circumstantial evidence.

You would be authorized to convict only if the evidence, whether direct, circumstantial, or both, excludes all reasonable theories of innocence and proves the guilt of the accused beyond a reasonable doubt.

1.31.10 Credibility of Witnesses, P's 7 & D's 3

The jury must determine the credibility of the witnesses. In deciding this, you may consider all of the facts and circumstances of the case, including the witnesses' manner of testifying, their means and opportunity of knowing the facts about which they testify, the nature of the facts about which they testify, the probability or improbability of their testimony, their interest or lack of interest in the outcome of the case, and their personal credibility as you observe it.

1.31.45 Witness, Impeached, D's 10

To impeach a witness is to show that the witness is unworthy of belief. A witness may be impeached by disproving the facts to which the witness testified.

1.31.47 Prior Statements, D's 11 (current pattern)

Your assessment of a trial witness's credibility may be affected by comparing or contrasting that testimony to statements or testimony of that same witness before the trial started. It is for you to decide whether there is a reasonable explanation for any inconsistency in a witness's pre-trial statements and testimony when compared to the same witness's trial testimony. As with all issues of witness credibility, you the jury must apply your common sense and reason to decide what testimony you believe or do not believe.

1.31.90. Single witness; corroboration, P's 11

The testimony of a single witness, if believed, is sufficient to establish a fact. Generally, there is no legal requirement of corroboration of a witness, provided you find the evidence to be sufficient.

1.32.10 Defendant's choice not to testify (current pattern), P's 12 & D's 4

The defendant does not have to present any evidence nor testify. If the defendant chooses not to testify, you may not consider that in any way in making your decision.

1.32.16. Statement of Defendant, P's 13

A statement that the defendant allegedly made has been offered for your consideration. Before you may consider this as evidence for any purpose, you must determine whether the defendant's statement was voluntary.

1.32.17. Voluntariness defined, P's 14

To be voluntary, a statement must be freely and willingly given and without coercion, duress, threats, use of violence, fear of injury, or any suggestions or promises of leniency or reward. A statement induced by the slightest hope of benefit or the remotest fear of injury is not voluntary. To be voluntary, a statement

must be the product of a free will and not under compulsion or any necessity imposed by others.

1.32.19. Burden of proof as to voluntariness, P's 15

The burden of proof is upon the State to establish that the statement was voluntary, that is, freely and willingly made. If you do not find that the statement was voluntary, you may not consider it for any purpose.

1.34.00. Limiting instructions, P's 17

Sometimes evidence is admitted for a limited purpose. Such evidence may be considered by the jury for the sole issue or purpose for which the evidence is limited and not for any other purpose.

1.34.10 Other crimes, wrongs, acts, P's 18

In order prove to its case, the State

- . must show intent
- . must negate or disprove accident
- . may show motive

To do so, the State has offered evidence of other acts allegedly committed by the accused. You are permitted to consider that evidence only insofar as it may relate to those issues and not for any other purpose.

You may not infer from such evidence that the defendant is of a character that would commit such crimes.

The evidence may be considered only to the extent that it may show the issues that the state is authorized to prove in the crimes charged in the case now on trial. Such evidence, if any, may not be considered by you for any other purpose.

The defendant is on trial for the offenses charged in this bill of indictment only and not for any other acts even though such acts may incidentally be criminal and may have resulted in conviction.

Before you may consider any other alleged acts for the limited purposes stated, you must first determine whether the accused committed the other alleged acts.

If so, you must then determine whether the acts shed any light on the issues for which the act was admitted in the crimes charged in the indictment in this trial. Remember to keep in mind the limited use and the prohibited use of this evidence about other acts of the defendant.

By giving this instruction, the Court in no way suggests to you that the defendant has or has not committed any other acts, nor whether such acts, if committed, prove anything; this is solely a matter for your determination.

1.34.20. Prior difficulties between parties, P's 19

Evidence of prior difficulties between the defendant and the alleged victim has been admitted for the sole purpose of illustrating, if it does, the state of feeling between the defendant and the alleged victim.

Whether this evidence illustrates such matters is a matter solely for you, the jury, to determine, but you are not to consider such evidence for any other purpose.

1.35.10 Identification; Reliability, P's 21

Identity is a question of fact for you to determine. Your determination of identity is dependent upon the credibility of the witness or witnesses offered for this purpose. You should consider all of the factors previously charged you regarding credibility of witnesses.

Some, but not all, of the factors you may consider in assessing reliability of identification are

- 1) the opportunity of the witness to view the alleged perpetrator at the time of the alleged incident,
- 2) the witness's degree of attention toward the alleged perpetrator at the time of the alleged incident,
- 3) the possibility of mistaken identity,
- 4) whether the witness's identification may have been influenced by factors other than the view that the witness claimed to have,
- 5) whether the witness on any prior occasion did not identify the defendant in this case as the alleged perpetrator, and
- 6) the length of the time between the crime and the out-of-court identification.

1.35.11 Identification; Burden of Proof, P's 22

It is for you to say whether, under the evidence in this case, the testimony of the witnesses and the facts and circumstances of the case sufficiently identify this defendant beyond a reasonable doubt as the perpetrator of the alleged crime. It is not necessary that the defendant show that another person committed the alleged offense.

If you do not believe that the defendant has been sufficiently identified as the person who committed the alleged crime, or if you have any reasonable doubt about such, then it would be your duty to acquit the defendant.

The burden of proof rests upon the State to prove, beyond a reasonable doubt, the identity of this defendant as the person who committed the crime alleged in this bill of indictment.

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1.51.10 Venue; Generally, P's 26

Members of the Jury, the law provides that criminal actions shall be tried in the county in which the crime was committed.

Venue, that is, the fact that the crime was committed in Athens-Clarke County, is a jurisdictional fact that must be proved by the State beyond a reasonable doubt as to the crime charged in the indictment, just as any element of the offenses. Venue must be proved by direct or circumstantial evidence, or both.

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1.40.10 Definition of a Crime, P's 23

The defendant is charged with a crime against the laws of this State. A crime is a violation of a statute of this state in which there is a joint operation of an act and intention.

1.41.10 Intent, P's 24 & D's 5

Intent is an essential element of any crime, and must be proved by the State beyond a reasonable doubt.

Intent may be shown in many ways provided you, the Jury, believe that it existed from the proven facts before you. It may be inferred from the proven circumstances or by acts and conduct, or it may be, in your discretion, inferred when it is the natural and necessary consequence of the acts. Whether or not you draw such an inference is a matter solely within your discretion.

Criminal intent does not mean an intention to violate the law or to violate a penal statute but means simply the intention to commit the act that is prohibited by a statute.

1.41.11 No presumption of criminal intent, P's 25 & D's 6

This defendant will not be presumed to have acted with criminal intent, but you may find such intention, or the absence of it, upon a consideration of words, conduct, demeanor, motive, and other circumstances connected with the acts for which the accused is being prosecuted.

State's request to charge No. 38

If you find that the acts were committed by the defendant, the state is not required to prove the exact date of occurrence as long as the acts were committed within 4 years from the date alleged in the indictment.

* * *

The Court will now instruct you on the offenses alleged in this indictment, or which may be raised by the evidence, if you so find.

Count 1: Aggravated Battery

2.22.30 Aggravated Battery, P's 36 (pattern)

For aggravated battery, the State must prove that the Defendant

1. maliciously caused bodily harm to another person
2. by depriving that person of a part of her body

2.22.31 Defining Malice as Used in Aggravated Battery, P's 37 & D's 13 (pattern)

In deciding whether or not the Defendant acted maliciously, understand that malice is not ill will or hatred. Malice in this context means an intent to cause the resulting bodily harm without justification or excuse. Malice also means willfully

doing an act while aware of a strong likelihood that the particular bodily harm may result.

Also, as to Count 1:

2.22.11 Battery, D's 15

A person commits the offense of battery when that person intentionally causes substantial physical harm or visible bodily harm to another. The term "visible bodily harm" means bodily harm capable of being perceived by a person other than the alleged victim and may include, but is not limited to, substantially blackened eyes, substantially swollen lips or other facial or body parts, or substantial bruises to facial or body parts.

Also, as to Count 1:

O.C.G.A. § 16-5-60 Reckless conduct, D's 17

A person commits the offense of reckless of reckless conduct when that person causes bodily harm to or endangers the bodily safety of another person by consciously disregarding a substantial and unjustifiable risk that his act or omission will cause harm or endanger the safety of the other person and the disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.

Finally, as to Count 1:

2.22.10 Battery, Simple; Statutory Definition, P's 35

A person commits simple battery when that person either

a) intentionally makes physical contact of an insulting or provoking nature with the person of another or

b) intentionally causes physical harm to another.

Count 3: Simple Battery, Family Violence

2.22.10 Battery, Simple; Statutory Definition, P's 35

A person commits simple battery when that person intentionally causes physical harm to another.

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1.60.10 Verdict Generally, P's 27

The Court has prepared a form document titled "Verdict" for your use, and will now instruct you on making your verdict.

If, after considering the testimony and evidence presented to you, together with the charge of the court, you should find and believe beyond a reasonable doubt that the defendant in Clarke County, [REDACTED], did on or about the 30th day of March, 2021 commit the offenses as alleged in the indictment, you would be

authorized to find the defendant guilty. In that event, the form of your verdict would be, "We, the jury, find the defendant guilty."

If you do not believe that the defendant is guilty of any of these offenses, or if you have any reasonable doubt as to the defendant's guilt, then it would be your duty to acquit the defendant, in which event the form of your verdict would be, "We, the jury, find the defendant not guilty."

1.60.11 Lesser Offense, D's 14 & D's 16 & D's 18

If you do not believe beyond a reasonable doubt that the defendant is guilty of aggravated battery, but do believe beyond a reasonable doubt that the defendant is guilty of battery, then you would be authorized to find the defendant guilty of battery, and the form of your verdict in that event would be, "We, the jury, find the defendant guilty of battery."

Also, if you do not believe beyond a reasonable doubt that the defendant is guilty of aggravated battery, but do believe beyond a reasonable doubt that the defendant is guilty of reckless conduct, then you would be authorized to find the defendant guilty of reckless conduct, and the form of your verdict in that event would be, "We, the jury, find the defendant guilty of reckless conduct."

Finally, if you do not believe beyond a reasonable doubt that the defendant is guilty of aggravated battery, but do believe beyond a reasonable doubt that the

defendant is guilty of simple battery, then you would be authorized to find the defendant guilty of simple battery, and the form of your verdict in that event would be, "We, the jury, find the defendant guilty of simple battery."

Each charge is separate

I instruct you that each charge set forth in each count in the indictment constitutes a separate and distinct matter. You must consider separately each charge, and the evidence applicable to each charge, and you must state your findings as to each count uninfluenced by your verdict as to any other count.

* * *

1.70.20 Sentencing; Responsibility for, P's 30

Members of the Jury, you are only concerned with the guilt or innocence of the Defendant. You are not to concern yourselves with punishment.

1.70.10 Court has no interest in case, P's 28

By no ruling or comment that the Court has made during the progress of the trial has the Court intended to express any opinion upon the facts of this case, upon the credibility of the witnesses, upon the evidence, or upon the guilt or innocence of the Defendant.

1.70.11 Sympathy, P's 29

Your verdict should be a true verdict based upon your opinion of the evidence according to the laws given you in this charge. You are not to show favor or sympathy to one party or the other. It is your duty to consider the facts objectively without favor, affection, or sympathy to either party.

In deciding this case, you should not be influenced by sympathy or prejudice for or against either party.

1.70.30 Deliberations, P's 31 (updated pattern)

One of your first duties in the jury room will be to choose one of you to be the foreperson. The foreperson will manage your deliberations and will sign the verdict to which all twelve of you freely and voluntarily agree.

You should start your deliberations with an open mind. Talk with each other and consider each other's views. Each of you must decide this case for yourself, but you should do so only after discussing and considering the case with your fellow jurors. Don't hesitate to change an opinion if you are convinced that it is wrong. However, you should never give up an honest opinion to be congenial or to reach a verdict solely because of the opinions of the other jurors.

During your deliberations, you must not communicate with anyone other than your fellow jurors about this case. You are also not permitted to conduct any

research about this case – including persons, places or legal concepts mentioned during the trial. These rules apply not only to in-person communication but also to communication or research using cellphones, text messaging, websites, blogs or social media of any kind.

1.70.40 Unanimous verdict, P's 32

Whatever your verdict is, it must be unanimous, that is, agreed to by all of you. The Verdict form must be written in ink, dated and signed by one of your members as foreperson, and returned to be published in open court.

(The Court will give instructions to the Alternate Juror.)

As for the Primary Jurors, in a moment I will excuse you to retire to the Jury Room, and at that time you may select your foreperson. But please do not begin your deliberations until you receive the indictment, the Verdict form, and the evidence that has been admitted in the case.