

1 INST

2

3

4

5

6

DISTRICT COURT
CLARK COUNTY, NEVADA

7

8

THE STATE OF NEVADA,

9

Plaintiff,

10

-vs-

Case No. C142448
Dept. No. VI
Docket B

11

MARGARET RUDIN,

12

13

Defendant(s).

14

INSTRUCTIONS TO THE JURY (INSTRUCTION NO. 1)

15

16

MEMBERS OF THE JURY:

17

It is now my duty as judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

20

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the Court.

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

An Indictment is but a formal method of accusing a person of a crime and is not of itself any evidence of her guilt.

In this case, it is charged in an Indictment that on or between the 1st day of May, 1994, and the 1st day of March, 1995, the Defendant committed the offenses of UNAUTHORIZED SURREPTITIOUS INTRUSION OF PRIVACY BY LISTENING DEVICE; MURDER WITH USE OF A DEADLY WEAPON and ACCESSORY TO MURDER, as follows:

COUNT I - UNAUTHORIZED SURREPTITIOUS INTRUSION OF PRIVACY BY LISTENING DEVICE

Defendant did, on or between May 1, 1994, and March 1, 1995, wilfully, unlawfully, and feloniously intrude upon the privacy of RONALD RUDIN, and/or SHARON MELTON, and/or HAROLD BOSCUCCI, and/or SHARON COOPER, and other persons by surreptitiously listening to, monitoring or recording, or attempting to listen to, monitor or record, by means of a mechanical or electronic listening device, the private conversations engaged in by said persons at the location of 5112 W. Charleston, Las Vegas, Clark County, Nevada, or did disclose the existence, content, substance, purport, effect or meaning of any conversations so listened to, monitored or recorded.

COUNT II - MURDER WITH USE OF A DEADLY WEAPON (OPEN MURDER)

Defendant did, on or between December 18, 1994, and January 21, 1995, then and there wilfully, feloniously, without authority of law, and with premeditation and deliberation, and with malice aforethought, kill RONALD RUDIN, a human being, by shooting at and into the body of RONALD RUDIN, with a deadly weapon, to-wit: a firearm; Defendant directly committing said act or aiding and abetting its commission by directly or indirectly counseling, encouraging, hiring, commanding, inducing, or procuring another unidentified person to commit said act, and/or by furnishing said person with information, physical access, and means to commit said act, the Defendant acting singly or pursuant to a conspiracy to commit murder.

COUNT III - ACCESSORY TO MURDER

Defendant did, on or between December 18, 1994, and January 21, 1995, wilfully,

1 unlawfully, and feloniously harbor, conceal or aid person[s] unknown, with intent that the said
2 person[s] had committed a felony, to-wit: Murder, and was liable to arrest therefor, by failing
3 to promptly report the Murder of RONALD RUDIN, destroying or hiding evidence of the
4 murder, failing to give material information to investigating officers, and giving false
5 information to investigating officers.

6 It is the duty of the jury to apply the rules of law contained in these instructions to the
7 facts of the case and determine whether or not the Defendant is guilty of the offense charged.

8 Each charge and the evidence pertaining to it should be considered separately. The fact
9 that you may find the Defendant guilty or not guilty as to one of the offenses charged should not
10 control your verdict as to any other offense charged.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Unauthorized surreptitious intrusion into privacy by listening device is the intrusion upon the privacy of other persons by surreptitiously listening to, monitoring, or recording, or attempting to listening to, monitor or record, by means of any mechanical, electronic or other listening device, any private conversation engaged in by the other persons, or disclose the existence, content, substance, purport, effect or meaning of any conversation so listened to, monitored or recorded.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Murder is the unlawful killing of a human being, with malice aforethought, whether express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

1
2 Malice aforethought means the intentional doing of a wrongful act without legal cause
3 or excuse or what the law considers adequate provocation. The condition of mind described as
4 malice aforethought may arise, not alone from anger, hatred, revenge or from particular ill will,
5 spite or grudge toward the person killed, but may result from any unjustifiable or unlawful
6 motive or purpose to injure another, which proceeds from a heart fatally bent on mischief or with
7 reckless disregard of consequences and social duty. Malice aforethought does not imply
8 deliberation or the lapse of any considerable time between the malicious intention to injure
9 another and the actual execution of the intent but denotes rather an unlawful purpose and design
10 in contradistinction to accident and mischance.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Express malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof.

Malice may be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Murder of the first degree is murder which is perpetrated by means of any kind of willful, deliberate, and premeditated killing. All three elements--willfulness, deliberation, and premeditation--must be proven beyond a reasonable doubt before an accused can be convicted of first-degree murder.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Willfulness is the intent to kill. There need be no appreciable space of time between formation of the intent to kill and the act of killing.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Deliberation is the process of determining upon a course of action to kill as a result of thought, including weighing the reasons for and against the action and considering the consequences of the action.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

A deliberate determination may be arrived at in a short period of time. But in all cases the determination must not be formed in passion, or if formed in passion, it must be carried out after there has been time for the passion to subside and deliberation to occur. A mere unconsidered and rash impulse is not deliberate, even though it includes the intent to kill.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Premeditation is a design, a determination to kill, distinctly formed in the mind by the time of the killing.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Premeditation need not be for a day, an hour, or even a minute. It may be as instantaneous as successive thoughts of the mind. For if the jury believes from the evidence that the act constituting the killing has been preceded by and has been the result of premeditation, no matter how rapidly the act follows the premeditation, it is premeditated.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The law does not undertake to measure in units of time the length of the period during which the thought must be pondered before it can ripen into an intent to kill which is truly deliberate and premeditated. The time will vary with different individuals and under varying circumstances.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The true test is not the duration of time, but rather the extent of the reflection. A cold, calculated judgment and decision may be arrived at in a short period of time, but a mere unconsidered and rash impulse, even though it includes an intent to kill, is not deliberation and premeditation as will fix an unlawful killing as murder of the first degree.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The intention to kill may be ascertained or deduced from the facts and circumstances of the killing, such as the use of a weapon calculated to produce death, the manner of its use, and the attendant circumstances characterizing the act.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

You are instructed that if you find the Defendant guilty of murder of the first degree, you must also determine whether or not a deadly weapon was used in the commission of this crime.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

“Deadly weapon” means any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death; any weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death; or a dangerous or deadly weapon specifically described as a gun, pistol, spring pistol, revolver or other firearm.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

If you find beyond a reasonable doubt that the Defendant committed Murder of the First Degree with the Use of a Deadly Weapon, then you are instructed that the verdict of Murder of the First Degree with the Use of a Deadly Weapon is the appropriate verdict.

If, however, you find that a deadly weapon was not used in the commission of the Murder, but you do find that a Murder was committed, then you are instructed that the verdict of Murder of the First Degree without the Use of a Deadly Weapon is the appropriate verdict.

You are instructed that you cannot return a verdict of both Murder of the First Degree with the Use of a Deadly Weapon and Murder of the First Degree without the Use of a Deadly Weapon.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The offense of First Degree Murder necessarily includes the lesser offense of Second Degree Murder.

If you are convinced beyond a reasonable doubt that the crime of murder has been committed by the Defendant, but you have a reasonable doubt whether such murder was of the first or of the second degree, you must give the Defendant the benefit of that doubt and return a verdict of murder of the second degree.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Murder of the Second Degree is murder with malice aforethought, but without the admixture of premeditation.

All murder which is not Murder of the First Degree is Murder of the Second Degree.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

You are instructed that if you find the Defendant guilty of murder of the second degree you must also determine whether or not a deadly weapon was used in the commission of this crime.

1
2 If you find beyond a reasonable doubt that the Defendant committed Murder of the
3 Second Degree with the Use of a Deadly Weapon, then you are instructed that the verdict of
4 Murder of the Second Degree with the Use of a Deadly Weapon is the appropriate verdict.

5 If, however, you find that a deadly weapon was not used in the commission of the
6 Murder, but you do find that a Murder was committed, then you are instructed that the verdict
7 of Murder of the Second Degree without the Use of a Deadly Weapon is the appropriate verdict.

8 You are instructed that you cannot return a verdict of both Murder of the Second Degree
9 with the Use of a Deadly Weapon and Murder of the Second Degree without the Use of a Deadly
10 Weapon.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2 Although your verdict must be unanimous as to the charge, you do not have to agree on
3 the theory of liability. You may return a verdict of guilt even if you cannot agree on whether the
4 facts establish direct action or aiding or abetting, so long as all of you agree that the evidence
5 establishes the Defendant's guilt.
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Every person not standing in the relation of husband or wife, brother or sister, parent or grandparent, child or grandchild to an offender, who:

(1) harbors, conceals or aids an offender;

(2) after the commission of a felony;

(3) with the intent that the offender may avoid or escape from arrest, trial, conviction or punishment; and

(4) that person had knowledge at the time of such harboring, concealing or aiding that the offender had committed a felony or was liable to arrest is an accessory to the felony.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2 The crime of an accessory to murder is a lesser related offense to murder.

3 If you are not satisfied beyond a reasonable doubt that the Defendant is guilty of the
4 offense of murder, she may, however, be found guilty of the lesser related offense, if the
5 evidence is sufficient to establish her guilt of such lesser offense beyond a reasonable doubt.

6 You may consider the offense of accessory to murder only if you have a reasonable doubt
7 that the Defendant is guilty of murder.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2 Every person concerned in the commission of a crime, whether she directly commits the
3 act constituting the offense, or aids or abets in its commission, and whether present or absent;
4 and every person who, directly or indirectly, counsels, encourages, hires, commands, induces or
5 otherwise procures another to commit a felony, gross misdemeanor or misdemeanor is a
6 principal, and shall be proceeded against as such. Aid means to help, assist, or strengthen; abet
7 means to encourage, counsel, induce or assist.

8 The fact that the person who was aided, abetted, counseled, encouraged, hired,
9 commanded, induced or procured, could not or did not entertain a criminal intent shall not be a
10 defense to any person who was aiding, abetting, counseling, encouraging, hiring, commanding,
11 inducing or procuring her.

12 The presence, companionship, and conduct before and after the offense are circumstances
13 from which a defendant's participation in the criminal intent may be inferred.

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Where two or more persons join together in a common design to commit any unlawful act, each is criminally responsible for the acts of his confederates committed in furtherance of the common design. In contemplation of law, the act of one is the act of all.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2 The flight of a person immediately after the commission of a crime or after the person is
3 accused of a crime that has been committed is not sufficient in itself to establish that person's
4 guilt, but is a fact which, if proved, may be considered by you in the light of all other proved
5 facts in deciding the question of defendant's guilty or innocence. Whether or not evidence of
6 flight shows a consciousness of guilty and the significance to be attached to such a circumstance
7 are matters for your deliberation.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2 To constitute the crime charged, there must exist a union or joint operation of an act
3 forbidden by law and an intent to do the act.

4 The intent with which an act is done is shown by the facts and circumstances surrounding
5 the case.

6 Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers
7 only to the state of mind with which the act is done.

8 Motive is not an element of the crime charged and the State is not required to prove a
9 motive on the part of the Defendant in order to convict. However, you may consider evidence
10 of motive or lack of motive as a circumstance in the case.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The Defendant is presumed innocent until the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every material element of the crime charged and that the Defendant is the person who committed the offense.

A reasonable doubt is one based on reason. It is not mere possible doubt but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict of not guilty.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

You are here to determine the guilt or innocence of the Defendant from the evidence in the case. You are not called upon to return a verdict as to the guilt or innocence of any other person. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the Defendant, you should so find, even though you may believe one or more persons are also guilty.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

There are two types of evidence; direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the Defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

At the time this evidence was admitted you were instructed that it could not be considered by you for any purpose other than the limited purpose for which it was admitted.

Do not consider this evidence for any purpose except the limited purpose for which it was admitted.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Testimony given by a witness at a prior proceeding who was unavailable at this trial has been read to you from the reporter's transcript of the proceeding. You must consider that testimony as if it had been given before you in this trial.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The Defendant in this case has introduced evidence for the purpose of showing that she was not present at the time and place of the commission of the alleged crime for which she is here on trial. If, after a consideration of all the evidence, you have a reasonable doubt that the defendant was present at the time the crime was committed, you must find her not guilty.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The credibility or believability of a witness should be determined by his manner upon the stand, his relationship to the parties, his fears, motives, interests or feelings, his opportunity to have observed the matter to which he testified, the reasonableness of his statements and the strength or weakness of his recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.

1
2 You have heard testimony that some of the witnesses have received or may receive
3 benefits, compensation, immunity and/or favorable treatment in connection with this case. You
4 should examine the testimony of such a witness with greater caution than that of an ordinary
5 witness. In evaluating that testimony, you should consider the extent to which it may have been
6 influenced by the receipt of any benefit, compensation, immunity and/or favorable treatment
7 from the prosecution.
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Discrepancies in a witness's testimony or between a witness's testimony and that of other witnesses, if there were any, do not necessarily mean that [any] [a] witness should be discredited. Failure of recollection is common. Innocent mis-recollection is not uncommon. Two persons witnessing an incident or a transaction often will see or hear it differently. Whether a discrepancy pertains to an important matter or only to something trivial should be considered by you.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The fact that a witness has been convicted of a felony, if this is a fact, may be considered by you only for the purpose of determining the believability of that witness. The fact of a conviction does not necessarily destroy or impair a witness's believability. It is one of the circumstances that you may take into consideration in weighing the testimony of that witness.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Evidence that at some other time a witness made a statement or statements that are inconsistent with his or her testimony in this trial, may be considered by you not only for the purpose of testing the credibility of the witness, but also as evidence of the truth of the facts as stated by the witness on that former occasion.

If you disbelieve a witness's testimony that he or she no longer remembers a certain event, that testimony is inconsistent with a prior statement or statements by him or her describing that event.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Evidence has been received from which you may find that an oral statement was made by the defendant before the offense with which she is charged was committed.

It is for you to decide whether the statement was made by the defendant.

Evidence of an oral statement ought to be viewed with caution.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The law does not compel a defendant in a criminal case to take the stand and testify and no presumption may be raised and no inference of any kind may be drawn from the failure of the defendant to testify.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his opinion as to any matter in which he is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Your duty is confined to the determination of the guilt or innocence of the Defendant.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

When you retire to consider your verdict, you must select one of your number to act as foreperson who will preside over your deliberation and will be your spokesman here in court.

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it signed and dated by your foreperson and then return with it to this room.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN: _____
DISTRICT JUDGE