

FILED
COURT OF APPEALS
DIVISION II

10 MAR -8 PM 12:41

STATE OF WASHINGTON

BY [Signature]
DEPUTY

NO. 39864-8-II

COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

SANDRA DANIELLE FICKETT,

Appellant.

BRIEF OF APPELLANT

John A. Hays, No. 16654
Attorney for Appellant

1402 Broadway
Suite 103
Longview, WA 98632
(360) 423-3084

 ORIGINAL

FOXPED 3-5/ PM 3-6-10

TABLE OF CONTENTS

	Page
A. TABLE OF AUTHORITIES	iv
B. ASSIGNMENT OF ERROR	
1. Assignment of Error	1
2. Issue Pertaining to Assignment of Error	2
C. STATEMENT OF THE CASE	
1. Factual History	3
2. Procedural History	4
D. ARGUMENT	
I. TRIAL COUNSEL’S FAILURE TO OBJECT WHEN A POLICE OFFICER SPECULATED THAT THE DEFENDANT DID NOT HAVE THE ABILITY TO DISPOSE OF CONTRABAND AS THE DEFENSE SUGGESTED DENIED THE DEFENDANT EFFECTIVE ASSISTANCE OF COUNSEL UNDER WASHINGTON CONSTITUTION, ARTICLE 1, § 22, AND UNITED STATES CONSTITUTION, SIXTH AMENDMENT	8
II. THE TRIAL COURT’S USE OF A JURY INSTRUCTION THAT BROUGHT COERCIVE PRESSURE ON THE JURY TO RETURN A VERDICT VIOLATED THE DEFENDANT’S RIGHT TO A FAIR TRIAL UNDER WASHINGTON CONSTITUTION, ARTICLE 1, § 3, AND UNITED STATES CONSTITUTION, FOURTEENTH AMENDMENT	12
E. CONCLUSION	17

F. APPENDIX

1. Washington Constitution, Article 1, § 3	18
2. Washington Constitution, Article 1, § 22	18
3. United States Constitution, Sixth Amendment	18
4. United States Constitution, Fourteenth Amendment	19
5. Instruction No. 10	19

TABLE OF AUTHORITIES

Page

Federal Cases

Brasfield v. United States,
272 U.S. 448, 47 S.Ct. 135, 71 L.Ed. 345 (1926) 12

Church v. Kinchelse,
767 F.2d 639 (9th Cir. 1985) 9

Strickland v. Washington,
466 U.S. 668, 80 L.Ed.2d 674, 104 S.Ct. 2052 (1984) 8

State Cases

State v. Boogaard, 90 Wn.2d 733, 585 P.2d 789 (1978) 12, 13

State v. Cobb, 22 Wn.App. 221, 589 P.2d 297 (1978) 9

State v. Crowell, 92 Wn.2d 143, 594 P.2d 905 (1979) 13, 15

State v. Johnson, 29 Wn.App. 807, 631 P.2d 413 (1981) 9

State v. Watkins, 99 Wn.2d 166, 660 P.2d 1117 (1983) 12

Constitutional Provisions

Washington Constitution, Article 1, § 3 12, 15

Washington Constitution, Article 1, § 22 8

United States Constitution, Sixth Amendment 8

United States Constitution, Fourteenth Amendment 12, 15

ASSIGNMENT OF ERROR

Assignment of Error

1. Trial counsel's failure to object when a police officer speculated that the defendant did not have the ability to dispose of contraband as the defense suggested denied the defendant effective assistance of counsel under Washington Constitution, Article 1, § 22, and United States Constitution, Sixth Amendment. RP 48-49.

2. The trial court's use of a jury instruction that brought coercive pressure on the jury to return a verdict violated the defendant's right to a fair trial under Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment. CP 43, 59.

Issues Pertaining to Assignment of Error

1. In a case in which the defense points out evidence suggesting that the defendant could easily have disposed of drugs the police found in her coin pocket had she known of its existence, does trial counsel's failure to object when a police officer speculates that the defendant did not have the ability to dispose of contraband deny the defendant effective assistance of counsel under Washington Constitution, Article 1, § 22, and United States Constitution, Sixth Amendment, when a properly made objection would have resulted in the exclusion of that evidence and an acquittal?

2. Does a trial court's use of a jury instruction that requires the jury to return a verdict of either guilty or not guilty bring coercive pressure on the jury sufficient to violate a defendant's right to a fair trial under Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment?

STATEMENT OF THE CASE

Factual History

On March 10, 2009, Washington State Trooper Nathan Hovinghoff was driving a marked patrol vehicle eastbound on State Route 12 at milepost 80 in rural Lewis County when the defendant drove by him in the opposite direction in a 1991 Chrysler. RP 25-26.¹ According to the Trooper, the defendant's muffler was so loud that he could hear it through his closed window. RP 26. When the defendant went by, Trooper Hovinghoff made a "U" turn, activated his red and blue stop lights, and accelerated to catch up to the defendant to stop her for the defective equipment violation. RP 26-27. As he did, the defendant pulled off SR 12 onto Fisher Road, and then stopped. RP 26. She had a male passenger in the front seat, and two children in the back. RP 27.

Once Trooper Hovinghoff stopped the patrol car and walked up to the defendant's vehicle, he asked for her license. RP 27. She immediately admitted that it was suspended. *Id.* At this point, he ordered her out of the vehicle, put her in handcuffs, performed a patdown of her person, and then

¹The record in this case includes one volume of verbatim reports for the jury trial held on September 2, 2009, and one volume of verbatim reports for the sentencing hearing held on October 2, 2009. The former is referred to herein as "RP [Page #]." The latter is referred to herein as "RP 10/2/09 [page #]."

placed her in the back of his patrol vehicle. RP 28. As he did, he told her that he would check on her driving status. *Id.* Once communications confirmed that the defendant's license was suspended, Trooper Hovinghoff returned to his patrol car, had the defendant get out of the back, told her she was under arrest, and searched her person. RP 28-29.

During the search of the defendant's person, Trooper Hovinghoff discovered a small baggie of crystalline substance in the defendant's right front coin pocket. RP 30. According to the Trooper, the defendant admitted that the substance was methamphetamine and stated: "I've been doing good for so long." RP 33-34. A later test of the substance in the baggie revealed the presence of methamphetamine. RP 16-21.

By contrast, the defendant denied that she made any such admissions to the Trooper. RP 59-79. Rather, she and her mother later stated that they had been going through boxes in the mother's garage earlier that day and that they had come upon a box of clothes belonging to a third person. RP 56, 61-63. These clothes included a pair of pants that the defendant's mother told the defendant that she could wear. *Id.* According to the defendant, when she put these pants on she had no idea there was a small amount of methamphetamine in the coin pocket. RP 72-74.

Procedural History

By information filed March 11, 2009, the Lewis County Prosecutor

charged the defendant Shandra Danielle Fickett with one count of possession of methamphetamine. CP 1-2. This case later came on for trial before a jury, during which the state called two witnesses: a state forensic scientist and Trooper Hovinghoff. RP 16, 25. The defense called the defendant and her mother. RP 50, 59. These witnesses testified to the facts set out in the preceding factual history. *See Factual History.*

In addition, during the cross-examination of Trooper Hovinghoff, the defendant's attorney elicited the facts that the defendant could easily have disposed of the methamphetamine had she know of its existence as she was out of his sight from the time he passed her on the highway until he actually got her vehicle stopped once he got turned around and caught up to her. RP 36-41. On redirect examination, the state asked whether or not the defendant had been wearing a seat belt. RP 47-48. However, the trooper did not recall one way or the other. *Id.* In spite of this fact, and without any objection from the defense, the state had the trooper give his opinion that had the defendant been wearing a seatbelt, it might have inhibited her ability to get to the methamphetamine and dispose of it. RP 48-49.

At the end of the case, the trial court instructed the jury without objection from either party. RP 81-90. The court also included instructions on unwitting possession. *Id.* The final instruction, proposed by the state and given by the court, stated as follows:

When you begin deliberating, you should first select a presiding juror. The presiding juror's duty is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. In your question, do not state how the jury has voted. The presiding juror should sign and date the question and give it to the bailiff. I will confer with the lawyers to determine what response, if any, can be given.

You will be given the exhibits admitted in evidence, these instructions, and a verdict form for recording your verdict.

You must fill in the blank provided in the verdict form the words "not guilty" or the word "guilty", according to the decision you reach.

Because this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict form to express your decision. The presiding juror must sign the verdict form and notify the bailiff. The bailiff will bring you into court to declare your verdict.

CP 43, 59 (emphasis added).

Following argument by counsel, the jury retired for deliberation, later returning a verdict of “guilty” as charged. CP 60. About one month after the verdict, the court sentenced the defendant within the standard range, and she then filed timely notice of appeal. CP 62-71, 72; RP 10/2/09 1-10.

ARGUMENT

I. TRIAL COUNSEL'S FAILURE TO OBJECT WHEN A POLICE OFFICER SPECULATED THAT THE DEFENDANT DID NOT HAVE THE ABILITY TO DISPOSE OF CONTRABAND AS THE DEFENSE SUGGESTED DENIED THE DEFENDANT EFFECTIVE ASSISTANCE OF COUNSEL UNDER WASHINGTON CONSTITUTION, ARTICLE 1, § 22, AND UNITED STATES CONSTITUTION, SIXTH AMENDMENT.

Under both United States Constitution, Sixth Amendment, and Washington Constitution, Article 1, § 22, the defendant in any criminal prosecution is entitled to effective assistance of counsel. The standard for judging claims of ineffective assistance of counsel under the Sixth Amendment is “whether counsel’s conduct so undermined the proper functioning of the adversary process that the trial cannot be relied on as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686, 80 L.Ed.2d 674, 104 S.Ct. 2052 (1984). In determining whether counsel’s assistance has met this standard, the Supreme Court has set a two part test.

First, a convicted defendant must show that trial counsel’s performance fell below that required of a reasonably competent defense attorney. Second, the convicted defendant must then go on to show that counsel’s conduct caused prejudice. *Strickland*, 466 U.S. at 687, 80 L.Ed.2d at 693, 104 S.Ct. at 2064-65. The test for prejudice is “whether there is a reasonable probability that, but for counsel’s errors, the result in the proceeding would have been different. A reasonable probability is a

probability sufficient to undermine confidence in the outcome.” *Church v. Kinchelse*, 767 F.2d 639, 643 (9th Cir. 1985) (citing *Strickland*, 466 U.S. at 694, 80 L.Ed.2d at 698, 104 S.Ct. at 2068). In essence, the standard under the Washington Constitution is identical. *State v. Cobb*, 22 Wn.App. 221, 589 P.2d 297 (1978) (counsel must have failed to act as a reasonably prudent attorney); *State v. Johnson*, 29 Wn.App. 807, 631 P.2d 413 (1981) (counsel’s ineffective assistance must have caused prejudice to client).

In the case at bar, the defendant claims ineffective assistance based upon trial counsel’s failure to object when the state called upon a witness to speculate whether or not a seat belt that the defendant might or might not have been wearing could have impeded her ability to take a packet of methamphetamine out of the coin pocket of her pants had she known that it was in that location. The following addresses this argument.

In this case, the defendant claimed unwitting possession of the methamphetamine the trooper found in the coin pocket of the pants she was wearing. In support of this claim, she testified to the facts surrounding her wearing that particular pair of pants, stating that they did not belong to her and that she did not check the pocket before putting them on. The defense also called the defendant’s mother to verify the defendant’s claims as she had been present when the defendant found the pants in a box in the garage and put them on. In further support of this claim, the defense was careful during

the cross-examination of the trooper to point out that the defendant was out of his sight while he made a “U” turn and accelerated to catch up to her and that had the defendant known she had methamphetamine in her front pocket, she could easily have taken it out and hidden it in her vehicle.

The defendant’s claims, supported by both her testimony and that of her mother, as well as the cross-examination of the trooper, was also supported by another fact: that she was driving with a suspended license and knew that she would be arrested once the officer stopped her vehicle. Indeed, as the trooper testified, the defendant readily admitted her driving status when he first approached her. In the face of the claim of unwitting possession and the evidence that supported it, the state attempted to elicit evidence through the trooper that the defendant’s seatbelt rode across her coin pocket and either did, or would have impeded her ability to retrieve the baggie. The problem with this rebuttal was that when the state asked the trooper whether or not the defendant was wearing a seat belt he did not remember. Neither did the state present any evidence that there was a functioning seatbelt in the vehicle or that it had a configuration that would have impeded the defendant’s retrieval of the baggie.

Having failed to elicit any evidence at all to support its claim, the state proceeded to speculation and opinion without foundation, asking the officer whether a seat belt might have impeded her ability to retrieve the baggie of

methamphetamine while she was driving the vehicle, had there been a functioning one in the vehicle, and had the defendant been wearing it, and had it been of a configuration that would have crossed her front pocket, and had she been unable to move it to get to the pocket. Given the defense offered in this case and the evidence carefully elicited to support it, there was no tactical reason at all for the defense attorney to refrain from objecting when the state elicited this evidence that was (1) inadmissible as speculation and opinion without foundation, and (2) highly damaging to the defense's core theory of the case. Thus, counsel's failure to object fell below the standard of a reasonably prudent attorney. In addition, this failure caused prejudice in that had the defense objected and obtained the exclusion of this evidence, it is more likely than not that the jury would have accepted the claim of unwitting possession. As a result, trial counsel's failure to object denied the defendant effective assistance of counsel under Washington Constitution, Article 1, § 22, and United States Constitution, Sixth Amendment, and she is entitled to a new trial.

II. THE TRIAL COURT'S USE OF A JURY INSTRUCTION THAT BROUGHT COERCIVE PRESSURE ON THE JURY TO RETURN A VERDICT VIOLATED THE DEFENDANT'S RIGHT TO A FAIR TRIAL UNDER WASHINGTON CONSTITUTION, ARTICLE 1, § 3, AND UNITED STATES CONSTITUTION, FOURTEENTH AMENDMENT.

Under Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment, the “right to a fair and impartial trial demands that a judge not bring to bear coercive pressure upon the deliberations of a criminal jury.” *State v. Boogaard*, 90 Wn.2d 733, 585 P.2d 789 (1978); *see also Brasfield v. United States*, 272 U.S. 448, 450, 47 S.Ct. 135, 71 L.Ed. 345 (1926). Under this principle, if the defendant can establish “a reasonably substantial possibility that the verdict was improperly influenced by the trial court’s intervention,” then the conviction must be reversed and the case remanded for retrial. *State v. Watkins*, 99 Wn.2d 166, 660 P.2d 1117 (1983).

The context for judicial violations of this constitutional principle is usually found at the point at which a jury indicates that it is deadlocked. For example, in *State v. Boogaard, supra*, the defendant was charged with second degree theft and the case eventually went to a two-day jury trial. At mid-afternoon on the second day of trial the jury retired for deliberations. When no verdict was forthcoming by 9:30 p.m., the court summoned counsel, and sent the bailiff to inquire how the jury stood numerically. The bailiff returned

with the information that they were 10 to 2. Upon learning this information, the court summoned the jury back into court, asked the foreman what the history on the vote had been, and asked each juror whether or not another half hour of deliberations might result in a verdict. When 11 of the 12 responded in the affirmative, the court sent the jury in for more deliberations. They shortly came back with a verdict of guilty. The defendant then appealed, arguing that the court had improperly influenced the verdict.

On appeal, the Washington Supreme Court reversed, holding as follows.

We have heretofore recognized that the right of jury trial embodies the right to have each juror reach his verdict uninfluenced by factors outside the evidence, the court's proper instructions, and the arguments of counsel; and that an instruction which suggests that a juror who disagrees with the majority should abandon his conscientiously held opinion for the sake of reaching a verdict invades that right, *however subtly the suggestion may be expressed*. *State v. Ring*, 52 Wn.2d 423, 325 P.2d 730 (1958); *Iverson v. Pacific Am. Fisheries*, 73 W.2d 973, 442 P.2d 243 (1968). The questioning of individual jurors, with respect to each juror's opinion regarding the jury's ability to reach a verdict in a prescribed length of time, after the court was apprised of the history of the vote in the presence of the jurors, unavoidably tended to suggest to minority jurors that they should "give in" for the sake of that goal which the judge obviously deemed desirable - namely, a verdict within a half hour.

State v. Boogaard, 90 Wn.2d at 736. (emphasis added).

Similarly, in *State v. Crowell*, 92 Wn.2d 143, 594 P.2d 905 (1979), the defendant was charged with the larceny of 33 head of cattle. Shortly after noon on the last day of trial the jury retired for deliberation. At 6:30 in the

evening, in response to a juror's question about arranging for suitcases, the bailiff informed the jury that evening lodging was unavailable for them, that they would be required to deliberate until they reached a verdict, and that if they hadn't reached a verdict by 10:00 p.m. the judge had indicated he would declare a mistrial. The jury then deliberated until 11:00 p.m., at which time they rendered a guilty verdict. Following reception of the verdict, the defendant moved for a new trial, arguing that the bailiff's comments improperly coerced the jury to return a guilty verdict. The trial denied the defendant's motion and later imposed sentence. The defendant appealed.

After the Court of Appeals affirmed, the defendant sought and obtained further review by the Supreme Court. In its opinion the Supreme Court reviewed a number of related cases in which similar comments by the bailiff had merited a new trial. It then reversed, stating as follows.

In each of these cases, as in this case, an out-of-court communication by a bailiff reasonably could have prejudiced the jurors' verdict. The communication was considerably more influential than an innocuous statement or an expression of an apparent concern. *See [State v.] Smith*, [43 Wn.2d 307, 311, 261 P.2d 109 (1953)] (bailiff asking jurors to lower voices); *State v. Forsyth*, 13 Wn.App. 133, 137, 533 P.2d 847 (1975) (bailiff expresses obvious concern about young, complaining witness in molestation case).

Indeed, the bailiff's statements here can be viewed as designed to hasten the jury's verdict. We recently ruled that a new trial was necessary in a similar situation. *See State v. Boogaard*, 90 Wn.2d 733, 740, 585 P.2d 789 (1978) (trial judge's examination of jurors coerced them into hastening their verdict and required new trial).

State v. Crowell, 92 Wn.2d at 148.

While the majority of improper and coercive comments by the court are given during deliberations in response to a claim that the jury is deadlocked, there is no limitation that this is the only time that a court's comments could be considered coercive under Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment. The case at bar illustrates this point by demonstrating a situation in which the court's final instructions to the jury just before deliberation were coercive in that one of those instructions required the jury to return a verdict, even if it meant that a juror or jurors had to vote contrary to their consciences in the case. This offending instruction, proposed by the state and given by the court as the final instruction, stated as follows:

When you begin deliberating, you should first select a presiding juror. The presiding juror's duty is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. In your question, do not state how the jury has voted. The presiding juror should sign and date the question and give it to the bailiff. I will confer with the lawyers to determine what response, if any, can be given.

You will be given the exhibits admitted in evidence, these instructions, and a verdict form for recording your verdict.

You must fill in the blank provided in the verdict form the words “not guilty” or the word “guilty”, according to the decision you reach.

Because this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict form to express your decision. The presiding juror must sign the verdict form and notify the bailiff. The bailiff will bring you into court to declare your verdict.

CP 43, 59 (emphasis added).

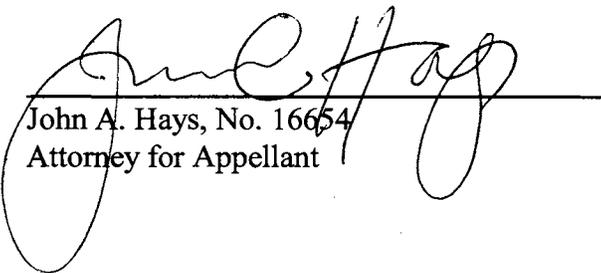
As the second to final paragraph of the final instruction unambiguously stated, the court was requiring the jury to either acquit the defendant or convict him. This instruction made no provision for a situation in which the jury was ultimately unable to agree upon a verdict. Rather, it precluded deadlock. The effect of this instruction was to coerce a verdict in violation of the defendant’s right to a fair trial. In addition, as the preceding argument set out, this error caused prejudice given the strength of the defendant’s evidence in support of the claim of unwitting possession. As a result, the defendant is entitled to a new trial.

CONCLUSION

This court should grant a new trial based upon the denial of the defendant right to effective assistance of counsel under Washington Constitution, Article 1, § 22, and United States Constitution, Sixth Amendment, and based upon the denial of her right to a fair trial under Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment.

DATED this 5th day of March, 2010.

Respectfully submitted,


John A. Hays, No. 16654
Attorney for Appellant

APPENDIX

**WASHINGTON CONSTITUTION
ARTICLE 1, § 3**

No person shall be deprived of life, liberty, or property, without due process of law.

**WASHINGTON CONSTITUTION
ARTICLE 1, § 22**

In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed and the right to appeal in all cases: Provided, The route traversed by any railway coach, train or public conveyance, and the water traversed by any boat shall be criminal districts; and the jurisdiction of all public offenses committed on any such railway car, coach, train, boat or other public conveyance, or at any station of depot upon such route, shall be in any county through which the said car, coach, train, boat or other public conveyance may pass during the trip or voyage, or in which the trip or voyage may begin or terminate. In no instance shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed.

**UNITED STATES CONSTITUTION,
SIXTH AMENDMENT**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

**UNITED STATES CONSTITUTION,
FOURTEENTH AMENDMENT**

All persons born or naturalized in the United State, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

INSTRUCTION NO. 10

When you begin deliberating, you should first select a presiding juror. The presiding juror's duty is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. In your question, do not state how the jury has voted. The presiding juror should sign and date the question and give it to the bailiff. I will confer with the lawyers to determine what response, if any, can be given.

You will be given the exhibits admitted in evidence, these instructions, and a verdict form for recording your verdict.

You must fill in the blank provided in the verdict form the words “not guilty” or the word “guilty”, according to the decision you reach.

Because this is a criminal case, each of you must agree for you to return a verdict. When all of you have so agreed, fill in the verdict form to express your decision. The presiding juror must sign the verdict form and notify the bailiff. The bailiff will bring you into court to declare your verdict.

