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APPENDIX A

IN RE: STANDARD CRIMINAL JURY INSTRUCTIONS IN CAPITAL CASES
HANDLING CAPITAL CASES COURSE FACULTY
DEPARTMENT HEAD, THE HONORABLE DEBRA J. RIVA
SC17-583

3.12(e) JURY VERDICT FORM—DEATH PENALTY

We the jury find as follows as to (Defendant) in this case:

A. Aggravating Factor(s) as to Count ___:

We the jury unanimously find that the State has established beyond a reasonable doubt the existence of (aggravating factor).

YES _____
NO _____

Repeat this step for each statutory aggravating factor submitted to the jury.

If you answer YES to ~~at least~~ one or more of the aggravating factors listed, please proceed to Section B. If you answered NO to ~~every~~the aggravating factor(s) listed, do not proceed to Section B; (Defendant) **is not eligible for the death sentence and will be sentenced to life in prison without the possibility of parole.**

B. Sufficiency of the Aggravating Factor(s) as to Count ___:

Reviewing the aggravating factor(s) that we unanimously found to be established beyond a reasonable doubt (Section A), we the jury unanimously find that the aggravating factor(s) are sufficient to warrant a possible sentence of death.

YES _____
NO _____

If you answer YES to Section B, please proceed to Section C. If you answer NO to Section B, do not proceed to Section C; (Defendant) **will be sentenced to life in prison without the possibility of parole.**

~~**C. Statutory Mitigating Circumstances:**~~

~~We the jury find that (statutory mitigating circumstance) was established by the greater weight of the evidence.~~

~~YES _____~~
~~NO _____~~

~~If you answered YES above, please provide the jury vote as to the existence of (statutory mitigating circumstance).~~

~~VOTE OF ____ TO ____.~~

~~*Repeat for each statutory mitigating circumstance.*~~

~~**Please proceed to Section D, regardless of your findings in Section C.**~~

~~D~~C. Eligibility for the Death Penalty for Count ___.

We the jury unanimously find that the aggravating factor(s) that were proven beyond a reasonable doubt (Section A) outweigh the proven mitigating circumstance(s) ~~established (Section C above)~~ as to Count ___.

YES _____
NO _____

If you answered YES to Section ~~D~~C, please proceed to Section ~~E~~D. If you answered NO to Section ~~D~~C, do not proceed; (Defendant) **will be sentenced to life in prison without the possibility of parole.**

~~E~~D. Jury Verdict as to Death Penalty

Having unanimously found that ~~at least~~ one or more aggravating factor(s) ~~has~~ have been established beyond a reasonable doubt (Section A), that the aggravating factor(s) are sufficient to warrant a sentence of death (Section B), and the aggravating factor(s) outweigh the mitigating circumstance(s) (Section ~~D~~C), we the jury unanimously find that (Defendant) should be sentenced to death.

YES _____
NO _____

If NO, our vote to impose a sentence of life is _____ to _____.

If your vote to impose death is less than unanimous, the trial court shall impose a sentence of life without the possibility of parole.

Dated this _____ day of _____, 20__, in _____ County, Florida.

_____
(Signature of foreperson)

7.11 PRELIMINARY INSTRUCTIONS IN PENALTY PROCEEDINGS — CAPITAL CASES

§ 921.141, Fla. Stat.

This instruction is to be given immediately before the opening statements in the penalty phase of a death penalty case.

Give 1a at the beginning of penalty proceedings before a jury that did not try the issue of guilt. Give bracketed language if the case has been remanded for a new penalty proceeding. See Hitchcock v. State, 673 So. 2d 859 (Fla. 1996). In addition, give the jury other appropriate general instructions.

1. **a. Members of the jury, the defendant has been found guilty of ____ count[s] of Murder in the First Degree in a previous proceeding. The only issue before you is to determine the appropriate sentence.**

Give 1b at the beginning of penalty proceedings before the jury that found the defendant guilty.

b. Members of the jury, you have found the defendant guilty of ____ count[s] of Murder in the First Degree.

For murders committed before May 25, 1994, the following paragraph should be modified to comply with the statute in effect at the time the crime was committed. If the jury inquires whether the defendant will receive credit for time served against a sentence of life without possibility of parole for 25 years, the court should instruct that the defendant will receive credit for all time served but that there is no guarantee the defendant will be granted parole either upon serving 25 years or subsequently. See Green v. State, 907 So. 2d 489, 496 (Fla. 2005).

2. **The punishment for this crime is either life imprisonment without the possibility of parole or death.**

Give this instruction in all cases.

The attorneys will now have an opportunity, if they wish, to make an opening statement. The opening statement gives the attorneys a chance to tell you what evidence they believe will be presented during the penalty phase of

this trial. What the lawyers say during opening statements is not evidence, and you are not to consider it as such. After the attorneys have had the opportunity to present their opening statements, the State and the defendant may present evidence relative to the nature of the crime and the defendant's character, background, or life. You are instructed that this evidence [, along with the evidence that you heard during the guilt phase of this trial,] is presented in order for you to determine, as you will be instructed, (~~1) whether each aggravating factor is proven beyond a reasonable doubt;~~ (~~2~~1) whether one or more aggravating factors exist beyond a reasonable doubt; (~~3~~2) whether the aggravating factor(s) found to exist beyond a reasonable doubt are sufficient to justify the imposition of the death penalty; (4~~3~~) whether any mitigating circumstances are proven by the greater weight of the evidence; (~~5~~4) whether the aggravating factor(s) outweigh the mitigating circumstance(s); and (~~6~~5) whether the defendant should be sentenced to life imprisonment without the possibility of parole or death. At the conclusion of the evidence and after argument of counsel, you will be instructed on the law that will guide your deliberations.

Aggravating Factors:

An aggravating factor is a standard to guide the jury in making the choice between recommending life imprisonment without the possibility of parole or death. It is a statutorily enumerated circumstance that increases the gravity of a crime or the harm to a victim.

You must unanimously agree that ~~each~~an aggravating factor was proven beyond a reasonable doubt before it may be considered by you in arriving at your final verdict. If more than one aggravating factor has been alleged, you should consider each aggravating factor separately and reach a separate finding as to the existence of each distinct factor alleged. You may not consider any aggravating factor that was not found to be proven beyond a reasonable doubt by the unanimous jury. In order to consider the death penalty as a possible penalty, you must unanimously determine that at least one aggravating factor has been proven beyond a reasonable doubt.

The State has the burden to prove ~~each~~an aggravating factor beyond a reasonable doubt. A reasonable doubt is not a mere possible doubt, a speculative, imaginary, or forced doubt. Such a doubt must not influence you to disregard an aggravating factor if you have an abiding conviction that it exists. On the other hand, if, after carefully considering, comparing, and weighing all the evidence, you do not have an abiding conviction that the

aggravating factor exists, or if, having a conviction, it is one which is not stable but one which wavers and vacillates, then the aggravating factor has not been proved beyond every reasonable doubt and you must not consider it in providing your verdict on the appropriate sentence to the court.

A reasonable doubt as to the existence of an aggravating factor may arise from the evidence, conflicts in the evidence, or the lack of evidence. If you have a reasonable doubt as to the existence of an aggravating factor, you must find that it does not exist. However, if you have no reasonable doubt, you should find that the aggravating factor does exist.

Before moving on to the mitigating circumstances, you must determine that the aggravating factors are sufficient to impose a sentence of death. If you do not unanimously agree that the aggravating factors are sufficient to impose death, do not move on to consider the mitigating circumstances.

Mitigating Circumstances:

Should you find one or more sufficient aggravating factors ~~do~~ exist to justify recommending the imposition of the death penalty, it will then be your duty to determine whether the aggravating factor(s) that you unanimously find to have been proven beyond a reasonable doubt outweigh the mitigating circumstance(s) that you find to have been ~~established~~proven. Unlike aggravating factors, you do not need to unanimously agree that a mitigating circumstance has been ~~established~~proven.

A mitigating circumstance is not limited to the facts surrounding the crime. It can be anything in the life of the defendant which might indicate that the death penalty is not appropriate for the defendant. In other words, a mitigating circumstance may include any aspect of the defendant's character, background, or life or any circumstance of the offense that reasonably may indicate that the death penalty is not an appropriate sentence in this case.

A mitigating circumstance need not be proven beyond a reasonable doubt by the defendant. A mitigating circumstance need only be proven by the greater weight of the evidence, which means evidence that more likely than not tends to prove the existence of a mitigating circumstance. If you determine by the greater weight of the evidence that a mitigating circumstance exists, you may consider it established and give that evidence such weight as you determine it should receive in reaching your conclusion as to the sentence to be imposed.

Comment

This instruction was adopted in 1981 and amended in 1985 [477 So. 2d 985], 1989 [543 So. 2d 1205], 1991 [579 So. 2d 75], 1992 [603 So. 2d 1175], 1994 [639 So. 2d 602], 1995 [665 So. 2d 212], 1996 [678 So. 2d 1224], 1997 [690 So. 2d 1263], 1998 [723 So. 2d 123], 2009 [22 So. 3d 17], 2014 [146 So. 3d 1110], and 2017.

7.11(a) FINAL INSTRUCTIONS IN PENALTY PROCEEDINGS — CAPITAL CASES

§ 921.141, Fla. Stat.

This instruction should be given after the closing arguments in the penalty phase of a death penalty trial.

Members of the jury, you have heard all the evidence and the argument of counsel. It is now your duty to make a decision as to the appropriate sentence that should be imposed upon the defendant for the crime of First Degree Murder. There are two possible punishments: (1) life imprisonment without the possibility of parole, or (2) death.

In making your decision, you must first unanimously determine whether the aggravating factor[s] alleged by the State [has] [have] been proven beyond a reasonable doubt. An aggravating factor is a circumstance that increases the gravity of a crime or the harm to a victim. No facts other than proven aggravating factors may be considered in support of a death sentence.

Aggravating factors. § 921.141(6), Fla. Stat.
The aggravating factor[s] alleged by the State [is] [are]:

Give only those aggravating factors noticed by the State which are supported by the evidence.

1. (Defendant) **was previously convicted of a felony and [under sentence of imprisonment] [on community control] [on felony probation].**

2. (Defendant) **was previously convicted of [another capital felony] [a felony involving the [use] [threat] of violence to another person].**

Give 2a or 2b as applicable.

a. The crime of (previous crime) **is a capital felony.**

b. The crime of (previous crime) **is a felony involving the [use] [threat] of violence to another person.**

3. (Defendant) **knowingly created a great risk of death to many persons.**

4. The First Degree Murder was committed while (defendant) **was [engaged] [an accomplice] in [the commission of] [an attempt to commit] [flight after committing or attempting to commit]**

any

[robbery].
[sexual battery].
[aggravated child abuse].
[abuse of an elderly person or disabled adult resulting in great bodily harm, permanent disability, or permanent disfigurement].
[arson].
[burglary].
[kidnapping].
[aircraft piracy].
[unlawful throwing, placing or discharging of a destructive device or bomb].

Check § 921.141(6)(d), Fla. Stat., for any change in list of offenses.

5. The First Degree Murder was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

6. The First Degree Murder was committed for financial gain.

7. The First Degree Murder was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

8. The First Degree Murder was especially heinous, atrocious or cruel.

> **"Heinous" means extremely wicked or shockingly evil.**
>
> **"Atrocious" means outrageously wicked and vile.**
>
> **"Cruel" means designed to inflict a high degree of pain with utter indifference to, or even enjoyment of, the suffering of others.**
>
> **The kind of crime intended to be included as especially heinous, atrocious, or cruel is one accompanied by additional acts that show that the crime was conscienceless or pitiless and was unnecessarily torturous to** (decedent).

9. The First Degree Murder was committed in a cold, calculated, and premeditated manner, without any pretense of moral or legal justification.

> **"Cold" means the murder was the product of calm and cool reflection.**
>
> **"Calculated" means having a careful plan or prearranged design to commit murder.**
>
> **A killing is "premeditated" if it occurs after the defendant consciously decides to kill. The decision must be present in the mind at the time of the killing. The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the killing. The period of time must be long enough to allow reflection by the defendant. The premeditated intent to kill must be formed before the killing.**
>
> **However, in order for this aggravating factor to apply, a heightened level of premeditation, demonstrated by a substantial period of reflection, is required.**

A "pretense of moral or legal justification" is any claim of justification or excuse that, though insufficient to reduce the degree of murder, nevertheless rebuts the otherwise cold, calculated, or premeditated nature of the murder.

10. (Decedent) **was a law enforcement officer engaged in the performance of [his] [her] official duties.**

11. (Decedent) **was an elected or appointed public official engaged in the performance of [his] [her] official duties, if the motive for the First Degree Murder was related, in whole or in part, to** (decedent's) **official capacity.**

12. (Decedent) **was a person less than 12 years of age.**

13. (Decedent) **was particularly vulnerable due to advanced age or disability, or because** (defendant) **stood in a position of familial or custodial authority over** (decedent)**.**

With the following aggravating factor, definitions as appropriate from § 874.03, Fla. Stat., must be given.

14. The First Degree Murder was committed by a criminal street gang member.

15. The First Degree Murder was committed by a person designated as a sexual predator or a person previously designated as a sexual predator who had the sexual predator designation removed.

16. The First Degree Murder was committed by a person subject to

[a domestic violence injunction issued by a Florida judge],
[a [repeat] [sexual] [dating] violence injunction issued by a Florida judge],
[a protection order issued from [another state] [the District of Columbia] [an Indian tribe] [a commonwealth, territory, or possession of the United States]],

and

the victim of the First Degree Murder was [the person] [a [spouse] [child] [sibling] [parent] of the person] who obtained the [injunction] [protective order].

Give in all cases.

As explained before the presentation of evidence, the State has the burden to prove an aggravating factor beyond a reasonable doubt. A reasonable doubt is not a mere possible doubt, a speculative, imaginary, or forced doubt. Such a doubt must not influence you to disregard an aggravating factor if you have an abiding conviction that it exists. On the other hand, if, after carefully considering, comparing, and weighing all the evidence, you do not have an abiding conviction that the aggravating factor exists, or if, having a conviction, it is one which is not stable but one which waivers and vacillates, then the aggravating factor has not been proved beyond every reasonable doubt and you must not consider it in providing a verdict.

A reasonable doubt as to the existence of an aggravating factor may arise from the evidence, a conflict in the evidence, or the lack of evidence. If you have a reasonable doubt as to the existence of an aggravating factor, you must find that it does not exist. However, if you have no reasonable doubt, you should find the aggravating factor does exist.

A finding that an aggravating factor exists must be unanimous.~~, that is, all of you must agree that each presented aggravating factor exists.~~ If more than one aggravating factor has been alleged, you should consider each aggravating factor separately and reach a separate finding as to the existence of each distinct factor alleged. You may not consider any aggravating factor that was not found to be proven beyond a reasonable doubt by the unanimous jury. You will be provided a form to make this finding [as to each alleged individual aggravating factor] and you should indicate whether or not you find [the] ~~[each]~~individual aggravating factor(s) ~~has~~have been proven beyond a reasonable doubt.

If you do not unanimously find that at least one aggravating factor was proven by the State, then the defendant is not eligible for the death penalty, and your verdict must be for a sentence of life imprisonment without the possibility for parole. At such point, your deliberations are complete.

If, however, you unanimously find that [one or more] [the] aggravating factor[s] [has] [have] been proven beyond a reasonable doubt, then the defendant is eligible for the death penalty, and you must make additional findings to determine whether the appropriate sentence to be imposed is life imprisonment without the possibility of parole or death.

The next step in the process is for the jury to determine whether the State has proven beyond a reasonable doubt that the aggravating factor(s) that you found to exist are sufficient to impose a sentence of death. The jury must unanimously find that the aggravating factor(s) found to exist are sufficient to impose a sentence of death.

If the jury does not unanimously find that the State has proven beyond a reasonable doubt that the aggravating factor(s) are sufficient to impose a sentence of death, then your verdict must be for a sentence of life imprisonment without the possibility of parole and your deliberations are complete.

Mitigating circumstances. § 921.141(7), Fla. Stat.

If you do unanimously find the existence of at least one aggravating factor and that the aggravating factor(s) [is] [are] sufficient to impose a sentence of death, the next step in the process is for you to determine whether any mitigating circumstances exist. A mitigating circumstance can be anything in the life of the defendant which might indicate that the death penalty is not appropriate. It is not limited to the facts surrounding the crime. A mitigating circumstance may include any aspect of the defendant's character, background, or life or any circumstance of the offense that may reasonably indicate that the death penalty is not an appropriate sentence in this case.

Among the mitigating circumstances you may consider are:

Give only those mitigating circumstances for which evidence has been presented.

1. (Defendant) **has no significant history of prior criminal activity.**

If the defendant offers evidence on this circumstance and the State, in rebuttal, offers evidence of other crimes, also give the following:

Conviction of (previous crime) **is not an aggravating factor to be considered in determining the penalty to be imposed on the defendant, but a**

conviction of that crime may be considered by the jury in determining whether the defendant has a significant history of prior criminal activity.

2. The First Degree Murder was committed while (defendant) **was under the influence of extreme mental or emotional disturbance.**

3. (Decedent) **was a participant in (**defendant's**) conduct or consented to the act.**

4. (Defendant) **was an accomplice in the First Degree Murder committed by another person and [his] [her] participation was relatively minor.**

5. (Defendant) **acted under extreme duress or under the substantial domination of another person.**

6. The capacity of (defendant) **to appreciate the criminality of [his] [her] conduct or to conform [his] [her] conduct to the requirements of law was substantially impaired.**

7. (Defendant's) **age at the time of the crime.**

The judge should also instruct on any additional mitigating circumstances as requested.

8. The existence of any other factors in (defendant's) **character, background, or life or the circumstances of the offense that would mitigate against the imposition of the death penalty.**

It is the defendant's burden to prove that mitigating circumstance(s) exist. As explained before these proceedings, the defendant need only ~~establish~~ prove that a mitigating circumstance exists by the greater weight of the evidence, which means evidence that more likely than not tends to establish the existence of a mitigating circumstance. If you determine by the greater weight of the evidence that a mitigating circumstance exists, you must consider it ~~established~~proven and give that evidence such weight as you determine it should receive in reaching your verdict about the appropriate sentence to be imposed. Any juror persuaded as to the existence of a mitigating circumstance must consider it in this case. ~~Further, any juror may consider a mitigating circumstance found by another juror, even if he or she did not find that factor to be mitigating.~~ In other words, the jury is entitled to

consider any mitigating circumstance and the consideration of a mitigating circumstance does not require unanimity by the jury.

Your decision regarding the appropriate sentence should be based upon proven aggravating factor(s) and ~~established~~proven mitigating circumstance(s) that have been presented to you during these proceedings. You will now engage in a weighing process.

Merging aggravating factors. Give the following paragraph if applicable. For example, the aggravating circumstances that 1) the murder was committed during the course of a robbery and 2) the murder was committed for financial gain, relate to the same aspect of the offense and may be considered as only a single aggravating circumstance. Castro v. State, 597 So. 2d 259 (Fla. 1992).

Pursuant to Florida law, the aggravating factors of *(insert aggravating factor)* **and** *(insert aggravating factor)* **are considered to merge because they are considered to be a single aspect of the offense. If you unanimously determine that the aggravating factors of** *(insert aggravating factor)* **and** *(insert aggravating factor)* **have both been proven beyond a reasonable doubt, your findings should indicate that both aggravating factors exist, but you must consider them as only one aggravating factor during the weighing process that I am about to explain to you.**

You must weigh all of the following:
a. Whether the aggravating factor[s] found to exist [is] [are] sufficient to justify the death penalty,
b. Whether the aggravating factor[s] outweigh[s] any mitigating circumstance[s] found to exist, and
c. Based on all of the considerations pursuant to these instructions, whether the defendant should be sentenced to life imprisonment without the possibility of parole or death.

The process of weighing aggravating factors and mitigating circumstances is not a mechanical or mathematical process. In other words, you should not merely total the number of aggravating factors and compare that number to the total number of mitigating circumstances. The law contemplates that different factors or circumstances may be given different weight or values by different jurors. Therefore, in your decision-making process, each individual juror must decide what weight is to be given to a particular factor or circumstance. Regardless of the results of each juror's individual weighing process—even if you find that the sufficient aggravators

outweigh the mitigators—the law neither compels nor requires you to determine that the defendant should be sentenced to death.

Once each juror has weighed the proven factors, he or she must determine the appropriate punishment for the defendant. The jury's decision regarding the appropriate sentence must be unanimous if death is to be imposed. To repeat what I have said, if your verdict is that the defendant should be sentenced to death, your finding that ~~each~~an aggravating factor exists must be unanimous, your finding that the aggravating factor(s) are sufficient to impose death must be unanimous, and your finding that the aggravating factor(s) found to exist outweigh the ~~established~~proven mitigating circumstance(s) must be unanimous, and your decision ~~if~~ to impose a sentence of death must be unanimous.

You will be provided a form to reflect your findings and decision regarding the appropriate sentence. If your vote on the appropriate sentence is less than unanimous, the defendant will be sentenced to life in prison without the possibility of parole.

The fact that the jury can make its decision on a single ballot should not influence you to act hastily or without due regard to the gravity of these proceedings. Before you vote, you should carefully consider and weigh the evidence, realizing that a human life is at stake, and bring your best judgment to bear in reaching your verdict.

Weighing the evidence.

When considering aggravating factors and mitigating circumstances, it is up to you to decide which evidence is reliable. You should use your common sense in deciding which is the best evidence and which evidence should not be relied upon in making your decision as to what sentence should be imposed. You may find some of the evidence not reliable, or less reliable than other evidence.

You should consider how the witnesses acted, as well as what they said. Some things you should consider are:

1. Did the witness seem to have an opportunity to see and know the things about which the witness testified?

2. Did the witness seem to have an accurate memory?

3. Was the witness honest and straightforward in answering the attorneys' questions?

4. Did the witness have some interest in how the case should be decided?

5. Did the witness's testimony agree with the other testimony and other evidence in the case?

Give as applicable.
6. Had the witness been offered or received any money, preferred treatment or other benefit in order to get the witness to testify?

7. Had any pressure or threat been used against the witness that affected the truth of the witness's testimony?

8. Did the witness at some other time make a statement that is inconsistent with the testimony he or she gave in court?

9. Has the witness been convicted of a felony or of a misdemeanor involving [dishonesty] [false statement]?

10. Does the witness have a general reputation for [dishonesty] [truthfulness]?

Law enforcement witness.
The fact that a witness is employed in law enforcement does not mean that [his] [her] testimony deserves more or less consideration than that of any other witness.

Expert witnesses.
Expert witnesses are like other witnesses with one exception—the law permits an expert witness to give an opinion. However, an expert's opinion is only reliable when given on a subject about which you believe that person to be an expert. Like other witnesses, you may believe or disbelieve all or any part of an expert's testimony.

Accomplices and Informants.

You must consider the testimony of some witnesses with more caution than others. For example, a witness who [claims to have helped the defendant commit a crime] [has been promised immunity from prosecution] [hopes to gain more favorable treatment in his or her own case] may have a reason to make a false statement in order to strike a good bargain with the State. This is particularly true when there is no other evidence tending to agree with what the witness says about the defendant. So, while a witness of that kind may be entirely truthful when testifying, you should consider [his] [her] testimony with more caution than the testimony of other witnesses.

Child witness.

You have heard the testimony of a child. No witness is disqualified just because of age. There is no precise age that determines whether a witness may testify. The critical consideration is not the witness's age, but whether the witness understands the difference between what is true and what is not true, and understands the duty to tell the truth.

Give only if the defendant testified.

The defendant in this case has become a witness. You should apply the same rules to consideration of [his] [her] testimony that you apply to the testimony of the other witnesses.

Witness talked to lawyer.

It is entirely proper for a lawyer to talk to a witness about what testimony the witness would give if called to the courtroom. The witness should not be discredited by talking to a lawyer about [his] [her] testimony.

Give in all cases.

You may rely upon your own conclusion about the credibility of any witness. A juror may believe or disbelieve all or any part of the evidence or the testimony of any witness.

Give only if the defendant did not testify.

The defendant exercised a fundamental right by choosing not to be a witness in this case. You must not be influenced in any way by [his] [her] decision. No juror should ever be concerned that the defendant did or did not take the witness stand to give testimony in the case.

Rules for deliberation.

These are some general rules that apply to your discussions. You must follow these rules in order to make a lawful decision.

1. You must follow the law as it is set out in these instructions. If you fail to follow the law, your decisions 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 wise and legal decisions in this matter.

2. Your decisions must be based only upon the evidence that you have heard from the testimony of the witnesses, [have seen in the form of the exhibits in evidence,] and these instructions.

3. Your decisions must not be based upon the fact that 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 decisions.

Give #5 if applicable.

5. The jury is not to discuss any question[s] that [a juror] [jurors] wrote that [was] [were] not asked by the Court, and must not hold that against either party.

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

Victim-impact evidence.

You have heard evidence about the impact of this murder on the [family] [friends] [community] of (decedent)**. This evidence was presented to show the victim's uniqueness as an individual and the resultant loss by** (decedent's) **death. However, you may not consider this evidence as an aggravating factor. Your decisions must be based on the aggravating factor[s], the mitigating circumstance[s], and the weighing process upon which you have been instructed.**

Submitting case to jurors.

In just a few moments you will be taken to the jury room by the [court deputy] [bailiff]. When you have reached decisions in conformity with these

instructions, the appropriate form[s] should be signed and dated by your foreperson.

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, and 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.

Give if judge has allowed jurors to keep their electronic devices during the penalty phase.

Many of you may have cell phones, tablets, laptops, or other electronic devices here in the courtroom. The rules do not allow you to bring your phones or any of those types of electronic devices into the jury room. Kindly leave those devices on your seats where they will be guarded by the [court deputy] [bailiff] while you deliberate.

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 [court deputy] [bailiff].

Give if applicable.

During this trial, [an item] [items] [was] [were] received into evidence as [an] exhibit[s]. You may examine whatever exhibit[s] you think will help you in your deliberations.

Give a or b as appropriate.

a. The[se] exhibit[s] will be sent into the jury room with you when you begin to deliberate.

b. If you wish to see an[y] exhibit[s], please request that in writing.

I cannot participate in your deliberations in any way. Please disregard anything I may have said or done that made you think I preferred one decision over another. If you need to communicate with me, send a note through the [court deputy] [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.

In closing, let me remind you that it is important that you follow the law spelled out in these instructions. 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 more than two centuries we have lived by the constitution and the law. No juror has the right to violate rules we all share.

Comment

This instruction was adopted in 2017.