
West Virginia Jury Instruction

[The following jury instructions (unless otherwise designated), were proposed by order of the West Virginia Supreme Court, and were publically available on the West Virginia Supreme Court's website until recently. The "proposed" jury instructions have now been removed, without explanation, from the Court's website. Sources tell me that these jury instructions are still in use throughout West Virginia.]

1st Degree Murder: Murder of the First Degree is the willful, deliberate, premeditated, intentional and malicious killing of another person.

Premeditation: The Court instructs the jury that to premeditate is to think of a matter before it is executed. Premeditation implies something more than deliberation, and may mean the party not only deliberated, but formed in his mind the plan of destruction.

Deliberation: The Court instructs the jury that to deliberate is to reflect, with a view to making a choice. If a person reflects even for a moment before he acts it is sufficient deliberation.

[Premeditation and Deliberation jury instruction specifically approved by the court in *State v. Guthrie*, 194 W.Va. 657, 461 S.E.2d 163 (Sup.Ct.App. W.V., 1995):

The jury is instructed that murder in the first degree consists of an intentional, deliberate and premeditated killing which means that the killing is done after a period of time for prior consideration. The duration of that period cannot be arbitrarily fixed. The time I which to form a deliberate and premeditated design varies as the minds and temperaments of people differ, and according to the circumstances in which they may be placed. Any interval of time between the forming of the intent to kill and the execution of that intent, which is of sufficient duration for the accused to be fully conscious of what he intended, in sufficient is sufficient to support a conviction for first degree murder.]

Malice: The word malice, as used in these instructions, is used in a technical sense. It may be either express or implied and it includes not only anger, hatred and revenge, but other unjustifiable motives. It may be inferred or implied by you from all of the evidence in this case if you find such inference is reasonable from facts and circumstances in this case which have been proven to your satisfaction beyond all reasonable doubt. It may be inferred from any deliberate and cruel act done by the Defendant without any reasonable provocation or excuse, however sudden. Malice is not confined to ill-will toward any one or more particular persons, but malice is every evil design in general; and by it is meant that the fact has been attended by such circumstances as are ordinarily symptoms of a wicked, depraved and malignant spirit, and carry with them the plain indications of a heart, regardless of social duty, fatally bent upon mischief. It is not necessary that malice must have existed for any particular length of time and it may first come into existence at the time of the act or at any previous time.

"Specific Intent to Kill": The Court instructs the jury that to constitute a willful, deliberate and

premeditated killing which is Murder of the First Degree, it is not necessary that an intention to kill exist for any particular length of time prior to the actual killing; it is only necessary that said intention should come into existence for the first time at the time of such killing or any time previous thereto.

Permissible Inferences: The court instructs the jury that there is a permissible inference of fact that a person intends that which he or she does or which is the immediate and necessary consequence of his or her act.

Use of a Deadly Weapon: The Court instructs the jury that the term "deadly weapon" means an instrument that is designed to be used to produce serious bodily injury or death, or is readily adaptable to such use.

2nd Degree Murder: Murder of the Second Degree is the unlawful, intentional killing of another person with malice but without deliberation or premeditation.

Depraved Heart Murder: [none]

Voluntary Manslaughter: Voluntary Manslaughter is the felonious, unlawful and intentional taking of another person's life but without premeditation, deliberation or malice.

Provocation: The Court instructs the jury that reasonable provocation means those certain acts committed against the defendant which would cause a reasonable man to kill. Inherent in this concept is the further requirement that the provocation be such that it would cause a reasonable person to lose control of himself and act out of the heat of passion, and that he did in fact do so.

Involuntary Manslaughter: Involuntary Manslaughter involves the accidental causing of death of another person, although unintended, which death is the proximate result of negligence so gross, wanton and culpable as to show a reckless disregard for human life.

Aiding & Abetting: An accomplice is a person who knowingly and with criminal intent participates directly or indirectly with another (other) person(s) in the commission of a crime. The witness _____ claims to have been an accomplice of the Defendant in the crime charged in the Indictment (Information). The testimony of an accomplice is admissible in evidence, yet in considering such testimony, as to matters connecting the Defendant with the commission of the crime which are not supported by other evidence and circumstances, you should examine such testimony with great care and caution in determining what weight you give thereto. You may, however, find the Defendant(s) guilty on the evidence of an accomplice standing alone and not supported by any other evidence if you are convinced by such evidence of the Defendant(s) guilt beyond all reasonable doubt.

Self Defense: One of the questions to be determined by you in this case is whether or not the Defendant acted in self-defense so as to justify his acts. Under the laws of this state, if the Defendant was not the aggressor, and had reasonable grounds to believe and actually did believe that he was in imminent danger of death or serious bodily harm from which he could save

himself only by using deadly force against his assailant, then he had the right to employ deadly force in order to defend himself. Deadly force is meant force which is likely to cause death or serious bodily harm.

In order for the Defendant to have been justified in the use of deadly force in self-defense, he must not have provoked the assault on him or have been the aggressor. Mere words, without more, do not constitute provocation or aggression.

The circumstances under which he acted must have been such as to produce in the mind of a reasonable prudent person, similarly situated, the reasonable belief that the other person was then about to kill him or to do him serious bodily harm. In addition, the Defendant must have actually believed that he was in imminent danger of death or serious bodily harm and that deadly force must be used to repel it.

If evidence of self-defense is present, the State must prove beyond a reasonable doubt that the Defendant did not act in self-defense. If you find that the State has failed to prove beyond a reasonable doubt that the Defendant did not act in self-defense, you must find the defendant not guilty. In other words, if you have a reasonable doubt as to whether or not the Defendant acted in self-defense, your verdict must be not guilty.

Battered Spouse Syndrome: [none]

Voluntary Intoxication: The Court instructs the jury that although voluntary intoxication or drunkenness will never provide a legal excuse for the commission of a crime, the fact that a person may have been (grossly) intoxicated at the time of the commission of a crime, may negate the existence of the intent of [_____], which is an element of the offense of [_____]. The evidence that the defendant acted [or failed to act] while in a state of gross intoxication may be considered in determining whether or not the defendant acted [or failed to act] with the intent of [_____].

If the evidence in this case leaves you with a reasonable doubt that the accused was capable of forming this specific intent to commit the crime charged because of gross intoxication, then you should acquit the Defendant of the offense of _____ and deliberate on the lesser included offense of _____.

Diminished Capacity: [none]

Insanity Defense: The Court instructs the members of the jury that an accused is not responsible for his act if at the time of the commission of the act it was the result of a mental disease or defect causing the accused to lack the capacity either to appreciate the wrongfulness of his act, or to conform his act to the requirements of the law.

There is a presumption that the accused was sane at the time of the alleged commission of the alleged crime. However, if any evidence was introduced by him/her or by the State fairly raising doubt upon the issue of his/her sanity at that time, the presumption of sanity at that time ceases to

exist; and the State then has the burden to establish the sanity of the accused beyond a reasonable doubt and that if the whole proof upon that issue leaves the jury with a reasonable doubt as to the Defendant's sanity at that time, the jury must accord him/her that benefit and acquit him/her.