JUDGE'S CHARGE TO THE JURY

Ladies and gentlemen of the Jury: You have heard the opening statements of the lawyers; you have heard the testimony of the witnesses in this case, soon you will be listening to the closing arguments. At this point in the trial, the Judge is required to inform you as to the law applicable to this case to govern you in your deliberations. This statement by the Judge as to the law of the case is known as a Charge; it is also called Instructions.

In any jury trial there are, in effect, two judges. I am one of the judges; the other is you, the jury. It is my duty to

preside over the trial and to determine what testimony and evidence is relevant and admissible under the law for your consideration. It is also my duty at this stage of the trial to instruct you on the law applicable to this case.

You, as jurors, are the judges of the facts; that is, you are to determine what actually happened in this case -- but, in reaching your decision as to the facts -- it is your sworn duty to follow the law I am now in the process of defining for you.

You must not change the law or apply your own idea of what you think the law should be. Both the Court and the Jury are bound by the law as stated in this Charge.

You are not to single out one instruction alone as stating the law, but must consider the instruction as a whole. Neither are you to be concerned with the wisdom of any rule of law stated by me. Regardless of any opinion you may have as to what the law is or ought to be, it would be a

violation of your sworn duty to base a verdict upon any view of the law other than that given in the instructions of the Court, just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything other than the evidence in this case.

Nothing said or done by the lawyers who have tried this case is to be considered by you as evidence of any fact. Opening statements of the lawyers are intended to give you a brief outline of what each side expects to prove so that you may better understand the testimony of the witnesses. The closing arguments are often very helpful in refreshing your recollections as to the testimony of the witnesses and such facts as may be developed thereby, but it is my duty to caution you that your verdict shall not be based upon the statements made to you by the lawyers at the opening of the trial or upon their closing arguments.

The function of the lawyers it to point out those things

that are most significant or most helpful to their side of the case, and, in doing so, to call your attention to certain facts or inferences that might otherwise escape your notice. In the final analysis, however, it is your own recollection and interpretation of the evidence that controls in the case. What the lawyers say is not binding upon you. Your verdict shall be based upon the evidence as you heard it from the witness stand and as you recollect it, not as the lawyers of this Court may recollect it.

Likewise, nothing I have said or done at any time during the trial is to be considered by you as evidence of any fact or as indicating any opinion concerning any fact, or the credibility of any witness, or the weight of any evidence.

You should disregard entirely questions and exhibits to which an objection was sustained or answers and exhibits ordered stricken out of the evidence. It is not the province of the jury to determine the admissibility of any exhibit or other

testimony. Do not draw any conclusion or speculation as to why or why not certain testimony or other evidence was either excluded or admitted.

Although you may consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from the facts which have been established by the testimony and evidence in the case.

There are two types of evidence from which you may properly find the truth as to the facts of a case. One is direct evidence--such as the testimony of an eyewitness; the other is indirect or circumstantial evidence--the proof of a chain of circumstances pointing to the existence of non-existence of certain facts. As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply

requires that you find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

Now, I have said that you must consider all the evidence. This does not mean, however, that you must accept all the evidence as true and accurate. However, the mere union of a number of independent circumstances, each of an imperfect and inclusive character, will not justify a conviction.

You are the sole judges of the "credibility" or "believability" of each witness and the weight to be given to his or her testimony.

As used in this charge, "credibility of a witness" means the truthfulness or lack of truthfulness of a witness. "The weight of the evidence" means the extent to which you are, or are not, convinced by the evidence.

The tests are: "How truthful is the witness and how convincing is his or her evidence in the light of all the

evidence and circumstances shown?"

In determining the credit and weight you will give to the testimony of any witness who has testified before you, you may consider if found by you from the evidence:

his or her good memory or lack of memory;

his or her interest or lack of interest in the outcome of the trial;

his or her demeanor or manner of testifying;

his or her opportunity and means or lack of opportunity and means of having knowledge of the matters concerning which he or she testified;

the reasonableness or unreasonableness of his or her testimony;

his or her apparent fairness or lack of fairness.

From these and all other conditions and circumstances appearing from the evidence, you may give to the testimony

of the witness such credit and weight as you believe it is entitled to receive.

A witness may be discredited or "impeached" by contradictory evidence, by a showing that he or she testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something, or has failed to say or do something, which is inconsistent with the witness's present testimony.

If you believe that any witness has been so impeached, then it is your exclusive province to give the testimony of that witness such credibility or weight, if any, as you may think it deserves. You may believe such parts of their testimony as you believe to be true and reject such parts as you believe to be false, or you may refuse to believe any part of such testimony, for it is a matter for you to determine, from all the testimony taken and all the circumstances surrounding the case, what witnesses have testified truthfully

and what ones, if any, have testified falsely.

The Court instructs the jury that the rules of evidence ordinarily do not permit the opinion of a witness to be received as evidence. An exception to this rule exists if scientific, technical, or other specialized knowledge will assist the jury to understand the evidence or determine a fact in issue. A witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise as to any such matter in which he is versed and which is material to the case.

You should consider each expert opinion in evidence in this case and give it such weight as you think it deserves. You should weigh the reasons, if any, given for it. You are not bound, however, by such opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it entirely if in your judgment the reasons given for it are not sound.

The case you have been sworn to try is a criminal case. The State has the entire burden of proof in criminal cases to prove the guilt of the Defendant as charged in the indictment beyond a reasonable doubt. This burden never shifts to the Defendant for the law never imposes upon a Defendant in a criminal case the burden or duty of calling any witness or producing any evidence.

Criminal cases are brought to Court by way of what we call an indictment. The indictment or formal charge against the Defendant is not evidence and is not to be considered by you as having any weight whatsoever as evidence against the Defendant. No juror should permit himself or herself to be influenced against the Defendant because of or on account of the indictment in this case.

The law presumes a Defendant to be innocent of the crime charged in the Indictment. Thus a Defendant, although accused, begins a trial with a "clean slate" -- with no

evidence against him. And the law permits nothing but legal evidence presented before a jury to be considered in support of any charge against the accused. So the presumption of innocence alone is sufficient to acquit a Defendant, unless the jurors are satisfied beyond a reasonable doubt of the Defendant's guilt after careful and impartial consideration of all the evidence in this case.

There is no shifting of this burden, and it remains on the State throughout the whole trial. is not required to prove his innocence, and if after considering the evidence you entertain a reasonable doubt of the guilt of from the whole evidence, then you should find him not guilty.

It is not required that the State prove guilt beyond all possible doubt. The test is one of reasonable doubt. Reasonable doubt is a doubt based upon reason and common sense -- the kind of doubt that would make a reasonable

person hesitate to act in matters of importance in his or her life. Proof beyond a reasonable doubt, therefore, must be proof of such convincing character that a reasonable person would not hesitate to rely or act upon it.

The jury will remember that a Defendant is never to be convicted on mere suspicion or conjecture. If the jury views the evidence as reasonably permitting either of two theories -- one in favor of the State and one in favor of , then it is the duty of the Jury in arriving at your verdict to adopt the theory and conclusion most favorable to and find him not guilty.

It is not sufficient for the State to prove that the Defendant was probably guilty, but such guilt must be established by strong and sufficient evidence to remove from the minds of the jury every reasonable doubt to the contrary.

The Defendant has entered a plea of Not Guilty and his plea places upon the prosecution the burden of proving each

and every element of the offense charged, if it can, beyond a reasonable doubt. The Defendant is not required to prove his innocence, nor is he required to produce any evidence as to any fact.

The defendant, , is a competent witness in his own behalf and his credibility is not to be diminished solely because he is being tried for a criminal offense. His testimony it to be given the same careful and thorough consideration as the testimony of all other witnesses and is to be judged as to credibility by the same standard as applied to all other witnesses.

If, after considering all the evidence in this case there remains in the minds of the jury a reasonable doubt as to the guilt of , then he is entitled to the benefit of that doubt and you must acquit him.

Before can be convicted, the State must overcome the presumption that he is innocent and prove to

your satisfaction beyond a reasonable doubt that he is guilty as charged in the indictment.

The offense charged in the indictment in this case is Burglary. One of two (2) verdicts may be returned by you under the indictment. They are: (1) Guilty of Burglary; (2) Not Guilty.

The felony offense of Burglary is committed when a person breaks and enters the dwelling house of another person ~~with the intent~~ to commit a crime therein. The State has previously noticed the defendant that the specific crime the defendant intended to commit was larceny.

"Larceny" is defined as the unlawful stealing, taking and carrying away of the personal property of another person without the owner's consent, with the intent to permanently deprive the owner of his property.

"Burglary" is accomplished when any force, however slight, is employed to make it plausible or convenient for a

human being to enter the dwelling house, and "entering" is the actual physical entry into the dwelling house.

Thus, the Court instructs the jury that in the crime of burglary, there are always two intents, one to break and enter, which must be executed, and the other to commit in the building a theft. In order to render a person guilty of the offense of burglary, it is necessary that the breaking and entering be done with the intent to commit larceny, and it is essential that the intent be averred and proved in order to sustain a conviction. Existence of the intent cannot be based upon surmise or speculation.

Before the Defendant can be convicted of Burglary, the State must overcome the presumption that he is innocent and prove beyond all reasonable doubt that:

1. the Defendant,
2. in Ohio County, West Virginia
3. on or about ,

4. did unlawfully and feloniously,

5. break and enter

6. the dwelling house

7. of

8. with the intent to commit the crime of larceny therein.

You are reminded that the fact that the Defendant broke and entered the residence is not sufficient to convict the Defendant of Burglary. The State must also prove beyond a reasonable doubt that the Defendant intended to commit a Larceny once inside the house.

If after impartially considering, ~~weighing and~~ comparing all the evidence, both that of the State and that of the Defendant, the jury and each member of the jury is convinced beyond a reasonable doubt as to the truth of each of these elements of Burglary, you may find the Defendant Guilty of Burglary. If after so considering the evidence, the jury and

each member of the jury has a reasonable doubt as to the truth of one or more of these elements of Burglary, you shall find Not Guilty.

You will note that it is alleged that the offense was committed "on or about" a certain date. The proof need not establish with certainty the exact date of the alleged offense. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged.

I caution you, members of the jury, that you are here to determine the guilt or innocence of the accused from the evidence in this case. The Defendant is on trial for the offense alleged in the indictment.

You do not have to believe that the Defendant is innocent of the charge against him in order to find a verdict of Not Guilty; your verdict of Not Guilty only means that the prosecution has failed to prove to you the guilt of the

Defendant, , beyond a reasonable doubt.

You are further instructed, therefore, that the Defendant does not have to put on any evidence of his innocence in order for you to find him Not Guilty.

Also, the punishment provided by law for the offense charged in the indictment is a matter exclusively within the province of the Court, and should never be considered by the Jury in any way, in arriving at an impartial verdict as to the guilt or innocence of the accused.

Any verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. In other words, your verdict must be unanimous.

It is your duty as jurors, to consult with one another, and to deliberate in an effort to reach agreement if you can do so without violence to individual judgment. Each of you must

decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of the evidence solely because of the opinion of your fellow jurors. or for the mere purpose of returning a verdict.

You must not allow your verdict to be influenced by sympathy, passion, prejudice, or public sentiment for or against the Defendant or the State.

Upon retiring to the Jury room, you shall first select one of your number to act as foreperson who will preside over your deliberations and will be your spokesperson here in Court.

You will take the verdict form and this charge to the Jury room and when you have reached unanimous agreement as

to your verdict, you will have your Foreperson complete the verdict form, date and sign it, and then return to the Courtroom.

If during your deliberations you should desire to communicate with the Court, please reduce your message or question to writing signed by the Foreperson, and pass the note to the Bailiff who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you return to the Courtroom so that I can address you orally. I caution you, however, with regard to any message or question you might send, you should never state or specify your numerical division at that time.

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Date