

CHAPTER B

CRIMINAL JURY ORIENTATION, EXAMINATION AND SELECTION PROCESS

Ladies and Gentlemen:

The case we are about to try is a criminal case. The prosecution is represented by _____, who is an attorney from the District Attorney's Office. I will sometimes refer to the District Attorney as "the prosecution" or "the People." The "defendant" or "accused" is _____.

[S/He is represented by _____.]

-or-

if the defendant is pro se

[The defendant has decided to represent himself/herself and not use the services of an attorney.]

and, if there is advisory counsel:

[The person seated beside the defendant is an advisory attorney. The defendant may consult with this person during the course of these proceedings.]

and, if defendant is pro se, with or without advisory counsel:

[It is his/her right to do this. His/her decision has no bearing on whether s/he is guilty or not guilty, and it should have no effect on your consideration of the case.]

I will now read a statement of the charges.

The charges against the Defendant are the prosecutor's claims that the Defendant committed crimes. They are not evidence that the Defendant committed the crimes, and are merely accusations.

These are the charges which have been brought against the Defendant:

Here, read information, indictment or complaint, and in plain and clear language, do one of the following:

1. *Read a statement as to the nature of the case, using applicable instructions, if available, or*
2. *Read a joint statement of factual information intended to provide a relevant context for prospective jurors to respond to questions asked of them, or*
3. *At the request of counsel and in the discretion of the trial judge, counsel may present such information through brief, non-argumentative statements.*

Crim.P. 24(a)(2)(iv).

[These statements are] [This statement is] not evidence, but are merely offered to provide basic information to assist in selecting the jury. By pleading "not guilty", the defendant says that s/he did not commit the crime(s). The defendant is presumed to be innocent. Therefore, the prosecution has the burden of proving the [charge(s)] beyond a reasonable doubt.

A reasonable doubt is a doubt based upon reason and common sense which arises from a fair and rational consideration of all the evidence, or the lack of evidence, in this case. It is a doubt which is not a vague, speculative or imaginary doubt, but such a doubt as would cause reasonable people to hesitate to act in matters of importance to themselves. The jury will decide whether the prosecution has proven the charge(s) beyond a reasonable doubt.

Pursuant to Crim.P. 24, the court is to explain to prospective jurors, in plain and clear language, general legal principles applicable to the case, including:

1. *the presumption of innocence,*
2. *burden of proof,*
3. *definition of reasonable doubt,*
4. *elements of charged offenses, and*
5. *other matters that jurors will be required to consider and apply in deciding the issues.*

The criminal jury instruction committee suggests that, with respect to the above, the following be taken into account:

1. *Issues that will be raised in voir dire,*
2. *Matters which the parties have agreed should be discussed by the Court,*
3. *Terms that require definition.*

At the option of the Defendant, the Court should identify any affirmative defenses at this preliminary stage.

[The evidence in this case may raise the issue(s) of _____ . Therefore, the following legal principles and definitions may be matters for your consideration:

[Here list applicable principles, (e.g. complicity, self-defense, etc.) and/or definitions (e.g. serious bodily injury)].

_____ jurors and _____ alternates will be chosen. They will consider all the evidence received during the trial. It will be the sole responsibility of the jurors chosen to determine the facts from all the evidence received during the trial. This will require your close attention, honesty, impartiality, and sound judgment.

(Omit if jury is to be sequestered.) [It will not be necessary to keep jurors together at noon or at night during the trial. If you are selected as a juror, you will be permitted to go home at night and leave the courthouse during the noon recess.]

Jurors and potential jurors must not discuss the case with themselves or with anyone else until instructed further by the Court. You must not read, view or listen to any reports about the case on radio or television, or in the press or any other media. You should not form or express any opinion about the outcome of this matter until the Court instructs you to begin your deliberations.

I want to explain briefly to you the method we will use in selecting a jury in this case:

(Here, the judge describes the process to be used in selecting the jury.)

The Court and each attorney may ask you questions concerning your ability to be fair and impartial jurors. You should answer fully all questions asked by the attorneys or by me. Even though you may not be called forward initially into the jury box, please listen closely to all that is said, because you may be asked to sit in the jury box before jury selection is completed.

JUROR'S OATH

I will ask you to raise your right hand and take an oath:

OATH ON JURY EXAMINATION

"Do you and each of you solemnly swear or affirm under penalty of perjury to answer truthfully the questions asked by the Court or counsel concerning your service as a juror in this case."

I will now ask you a series of questions. Raise your hand if any of these apply to you.

1. Are you related to the defendant(s) or any of the attorneys?

2. You have a relationship of guardian and ward, employer and employee, landlord and tenant, debtor and creditor, or principal and agent, or are you a member of the household, or a partner in business with, or surety on any bond or obligation with or for the defendant?

3. Are you now or have you been a party in a civil lawsuit involving the defendant, or complained against or been accused by the defendant in a criminal prosecution?

4. Have you been a grand juror, juror, or witness at a former trial or proceeding, arising out of the same factual situation, involving the defendant?

5. Were you a witness to any matter related to the crime or its prosecution?

6. Do you have a personal or financial interest in the outcome of this case?

7. You have feelings for or against the defendant or the prosecution?

8. Are you an employee of any public law enforcement agency, or of the Public Defender's Office?

9. Also, raise your hand if there is any reason you believe may disqualify you from being a juror.

10. You are not a citizen of the United States, eighteen years old, and a resident of this County.

11. You are unable to read, speak, and understand the English language.

12. You are incapable, by reason of physical or mental disability, of rendering satisfactory jury service.

13. You have the sole responsibility for the daily care of a permanently disabled person living in the same household, to the extent that the performance of juror service would create a substantial risk of injury to the health of the disabled person.

14. You have served for five days or more as a trial or grand juror in any state or federal court within the preceding twelve months, or have been scheduled for juror service within the next twelve months, or

By law, a jury consists of ____ persons [plus ____ alternate(s)]. Each side may excuse up to (the number of peremptory challenges conferred) of you without stating a reason. You should not be embarrassed or consider it any reflection upon you if you are one of those excused. By using this method of selecting a jury, both sides can participate more freely in the selection of a jury that is as fair and impartial as possible. This procedure is a part of our American system of justice and is fair to both sides.

JUDGE'S JURY EXAMINATION

At this time I will ask you certain questions to determine your qualifications to sit as impartial jurors. The attorneys will be allowed to ask you additional questions. If a particular question applies to you, please raise your hand.

This trial could take at least ____ days. Is there anyone who feels that he or she cannot give their full attention to this case for that period of time?

The attorneys and I may be asking some questions of a personal nature about you and your background and about various matters involved in this case. All members of the panel should listen attentively to the questions of others. If you would answer any of the questions substantially different than the person being questioned, you should bring this to the Court's attention at the time you are questioned individually. This will help expedite the questioning of prospective jurors. If any of you has a response that you would prefer not to discuss publicly, please raise your hand so that we can discuss the matter out of the presence of the other panel members.

PARTIES' VOIR DIRE AND EXERCISE OF CHALLENGES

JURORS' OATH

Ladies and gentlemen, you have been selected as jurors (and alternates) to try the case of *People v. _____*. Raise your right hand and take the oath of jurors:

"Do you solemnly swear or affirm under penalty of law that you and each of you will well and truly try the matter before the Court and render a true verdict, according to the evidence and the law."

BEFORE OPENING STATEMENTS

These are the procedures we will be following in this trial:

The first step in the trial will be the opening statements. Either attorney may make an opening statement if s/he chooses to do so.

Defendant's attorney may reserve opening statement until later in the trial or may elect not to make an opening statement at all. Opening statements are not evidence. Their purpose is only to help you understand what the evidence will be.

Next, the prosecution will offer evidence. Evidence consists of the sworn testimony of the witnesses, the exhibits admitted into evidence, and any other fact you are instructed to consider.

After the prosecution's evidence, [the defense] [Mr./Ms. _____] may present evidence, but is not required to do so. I want to remind you that the defendant is presumed to be innocent. The prosecution must prove the guilt of the defendant beyond a reasonable doubt. The defendant does not have to prove his innocence, call any witnesses, or introduce any evidence.

You may have to decide what testimony to believe. Consider all of the testimony given and the circumstances

under which each witness has testified. Consider each witness' knowledge, motive, state of mind, demeanor, and manner while on the stand. Consider the witness' means of knowledge, ability to observe, and strength of memory. Consider also any relationship each witness may have to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case. Consider all facts and circumstances shown by the evidence, which affect the credibility of the witness' testimony. You may believe all of the testimony of a witness, or part of it, or none of it.

At the conclusion of the evidence, I will give you the rules of law which you are to use in reaching your verdict. I will read those rules of law to you and you will be allowed to take them with you to the jury room during your deliberations.

After you have heard all the evidence and the instructions, the prosecution and the defense may make their closing arguments. Like opening statements, closing arguments are not evidence. Because the prosecution has the burden of proof, the prosecuting attorney will have the opportunity to reply to the closing argument made by the defense.

You will then go to the jury room to deliberate on a verdict. Your purpose as jurors is to decide what the facts are, and your decision must be based solely upon the evidence and the law I will give you in my instructions.

At times during the trial, the attorneys may make objections. This simply means that the attorney is requesting that I make a decision on a particular rule of law. It is the duty of an attorney to object to evidence which s/he believes may not properly be offered. Do not draw any conclusions from the objections or my rulings on them. If I sustain an objection to a question, the witness may not answer it. As jurors, you must draw no inference from the question or speculate as to what the witness would have said if permitted to answer. At other times I may instruct you not to consider a particular statement that was made. You must not consider any evidence to which an objection has been sustained or which I have instructed you to disregard. Such evidence is to be treated as if you had

never seen or heard it. If I overrule an objection, the witness may answer.

It is my job to decide what rules of law apply to the case. You must follow all of the rules as I explain them to you. Even if you disagree or do not understand the reasons for some of the rules, you must follow them. You will then apply these rules to the facts which you will determine from the evidence. In this way you will determine whether the prosecution has proven the guilt of the defendant beyond a reasonable doubt.

During the trial I may need to talk with the attorneys out of your hearing about questions of law. Sometimes you may be asked to leave the courtroom while I discuss such matters with the attorneys. We will try to limit these interruptions as much as possible. Do not infer from any ruling or from anything I say during this trial that I hold any views either for or against any party to this case.

Once the jury is impaneled, the judge shall again explain in more detail the general principles of law applicable to criminal cases, the procedural guidelines regarding conduct by jurors during the trial, case-specific legal principles, and definitions of technical or special terms expected to be used during the presentation of the case.

Crim.P. 24(a)(5).

JUROR NOTEBOOKS AND MATERIALS

You have received (writing materials) (notebooks). You may use these (materials) (notebooks) to take notes during the trial. However, you are not required to do so.

If you take notes, you should not allow the note taking to detract from your close attention to the testimony and conduct of each witness and all other evidence received during the trial.

Whether you take notes or not, you should rely on your memory as much as possible and not upon your notes or the

notes of other jurors. Any notes you take are to refresh your own individual memory.

These (materials) (notebooks) may only be used in the courtroom or jury room, and may not be taken anywhere else.

To identify your notebook or materials, please write your name on it/them. No one else will read your notes. At the end of the case, these notes will be returned to the Court and destroyed.

QUESTIONS BY JURORS

Rules governing jury trials do not allow jurors to ask questions directly of a witness. However, if you do have a question you would like to ask a witness during the trial, write your question down, but do not sign it. Hand the question to the bailiff during a recess. If you have a question for a witness who is about to leave the witness stand, signal the bailiff or me before the witness leaves the stand.

I may discuss the question with the lawyers. If I decide the question is proper, it will be asked when appropriate. Keep in mind, however, that the rules of evidence or other rules of law may prevent some questions from being asked. I will apply the same legal standards to your questions as I do to the questions asked by the lawyers.

If a particular question is not asked, do not guess why or what the answer might have been. The failure to ask a question is not a reflection on the person asking it, and you should not attach any significance to the failure to ask a question proposed by a juror.

QUESTIONS DURING DELIBERATIONS

Once you begin your deliberations, if you have a question about the evidence in this case or about the instructions or verdict forms that you have been given, your Foreperson should write the questions on a piece of paper, sign it and give it to the bailiff, who will bring it to me.

I will then confer with the attorneys as to the appropriate way to answer your question. However, there

may be some questions that, under the law, I am not permitted to answer. If I cannot answer a question, I will tell you that. Please do not try to guess about what the answer to your question might be or why I am not able to answer a particular question.

NOTES ON USE

Questions 10 through 14 above are based upon qualifications set forth in §13-71-105, C.R.S. Jurors are supposed to be screened by the jury commissioner as to these qualifications, but the Committee has determined that the trial court should inquire as well, in case of prior oversight or miscommunication. There are certain discretionary requirements of documentary proof, as well as definitions, guidelines and exceptions with which the user must be familiar.

If the Court is going to permit juror questions, the Court should inform the defendant during the *Curtis* advisement that the jurors will be permitted to ask questions through the Court, after the questions have been screened by you.

The Court is encouraged to refer to the Defendant by his or her formal name.

SOURCE & AUTHORITY

Crim.P. 24(a), (b), (g)

§16-10-103, C.R.S.

§13-71-105, C.R.S.

C.J.I. Crim., 1983, Chapter 1

C.J.I. Civ. (3d), 1:1.

Medina v. People, 114 P.3d 845 (Colo. 2005) (permitting the jury to ask questions through the judge did not violate defendant's due process rights).

People v. Preciado-Flores, 66 P.3d 155 (Colo. App. 2002) (jury not allowed to pre-deliberate)

Ma v. People, 121 P.3d 205 (Colo. 2005) (reserve military police officer is a challenge for cause as a compensated employee of a public law enforcement agency)