

2.1 PRELIMINARY INSTRUCTIONS

Ladies and gentlemen of the jury:

You have been selected and sworn as the jury to try the case of State of Florida v. JEFFREY STEPHEN GOZZO.

This is a criminal case. JEFFREY STEPHEN GOZZO is charged with BATTERY ON PERSON 65 YEARS OF AGE OR OLDER. The definition of the elements of BATTERY ON PERSON 65 YEARS OF AGE OR OLDER will be explained to you later.

It is your solemn responsibility to determine if the State has proved its accusation beyond a reasonable doubt against JEFFREY STEPHEN GOZZO. Your verdict must be based solely on the evidence, or lack of evidence, and the law.

The is not evidence and is not to be considered by you as any proof of guilt.

It is the judge's responsibility to decide which laws apply to this case and to explain those laws to you. It is your responsibility to decide what the facts of this case may be, and to apply the law to those facts. Thus, the province of the jury and the province of the court are well defined, and they do not overlap. This is one of the fundamental principles of our system of justice.

Before proceeding further, it will be helpful if you understand how a trial is conducted.

At the beginning of the trial the attorneys will 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 trial. What the lawyers say is not evidence, and you are not to consider it as such.

Following the opening statements, witnesses will be called to testify under oath. They will be examined and cross-examined by the attorneys. Documents and other exhibits also may be produced as evidence.

After the evidence has been presented, the attorneys will have the opportunity to make their final argument.

Following the arguments by the attorneys, the court will instruct you on the law applicable to the case.

After the instructions are given [the alternate juror will be released and] you will then retire to consider your verdict.

You should not form any definite or fixed opinion on the merits of the case until you have heard all the evidence, the argument of the lawyers and the instructions on the law by the judge. Until that time you should not discuss the case among yourselves.

During the course of the trial the court may take recesses, during which you will be permitted to separate and go about your personal affairs. During these recesses you will not discuss the case with anyone nor permit anyone to say anything to you or in your presence about the case. If anyone attempts to say anything to you or in your presence about this case, tell him and/or her that you are on the jury trying the case and ask him and/or her to stop. If he or she persists, leave him and/or her at once and immediately report the matter to the deputy, who will advise me.

The case must be tried by you only on the evidence presented during the trial in your presence and in the presence of the defendant, the attorneys and the judge. Jurors must not conduct any investigation of their own. This includes reading newspapers, watching television or using a computer, cell phone, the Internet, any electronic device, or any other means at all, to get information related to this case or the people and places involved in this case. This applies whether you are in the courthouse, at home, or anywhere else. You must not visit places mentioned in the trial or use the Internet to look at maps or pictures to see any place discussed during the trial.

Jurors must not have discussions of any sort with friends or family members about the case or the people and places involved. So, do not let even the closest family members make comments to you or ask questions about the trial. In this age of electronic communication, I want to stress again that just as you must not talk about this case face-to-face, you must not talk about this case by using an electronic device. You must not use phones, computers or other electronic devices to communicate. Do not send or accept any messages related to this case or your jury service. Do not discuss this case or ask for advice by any means at all, including posting information on an Internet website, chat room or blog.

In every criminal proceeding a defendant has the absolute right to remain silent. At no time is it the duty of a defendant to prove his innocence. From the exercise of a defendant's right to remain silent, a jury is not permitted to draw any inference of guilt, and the fact that a defendant did not take the witness stand must not influence your verdict in any manner whatsoever.

The attorneys are trained in the rules of evidence and trial procedure, and it is their duty to make all objections they feel are proper. When an objection is made you should not speculate on the reason why it is made; likewise, when an objection is sustained, or upheld, by me, you must not speculate on what might have occurred had the objection not been sustained, nor what a witness might have said had [he] [she] been permitted to answer.

QUALIFICATIONS INSTRUCTION

Many of you have cell phones, computers, and other electronic devices. Even though you have not yet been selected as a juror, there are some strict rules that you must follow about using your cell phones, electronic devices and computers. You must not use any device to search the Internet or to find out anything related to any cases in the courthouse.

Between now and when you have been discharged from jury duty by the judge, you must not provide or receive any information about your jury service to anyone, including friends, co-workers, and family members. You may tell those who need to know where you are that you have been called for jury duty. If you are picked for a jury, you may tell people that you have been picked for a jury and how long the case may take. However, you must not give anyone any information about the case itself or the people involved in the case. You must also warn people not to try to say anything to you or write to you about your jury service or the case. This includes face-to-face, phone or computer communications.

In this age of electronic communication, I want to stress that you must not use electronic devices or computers to talk about this case, including tweeting, texting, blogging, e-mailing, posting information on a website or chat room, or any other means at all. Do not send or accept any messages, including e-mail and text messages, about your jury service. You must not disclose your thoughts about your jury service or ask for advice on how to decide any case.

After you are called to the courtroom, the judge will give you specific instructions about these matters. A judge will tell you when you are released from this instruction. All of us are depending on you to follow these rules, so that there will be a fair and lawful resolution of every case.

2.7 CLOSING ARGUMENT
§ 918.19, Fla. Stat.

Both the State and the defendant have now rested their case.

The attorneys now will present their final arguments. Please remember that what the attorneys say is not evidence or your instruction on the law. However, do listen closely to their arguments. They are intended to aid you in understanding the case. Each side will have equal time, but the State is entitled to divide this time between an opening argument and a rebuttal argument after the defense has spoken.

3.1 INTRODUCTION TO FINAL INSTRUCTIONS

Members of the jury, I thank you for your attention during this trial. Please pay attention to the instructions I am about to give you.

3.2 STATEMENT OF CHARGE

JEFFREY STEPHEN GOZZO, the defendant in this case, has been accused of the crime of BATTERY ON PERSON 65 YEARS OF AGE OR OLDER.

3.4 WHEN THERE ARE LESSER INCLUDED CRIMES OR ATTEMPTS

In considering the evidence, you should consider the possibility that although the evidence may not convince you that the defendant committed the main crime[s] of which he is accused, there may be evidence that he committed other acts that would constitute a lesser included crime [or crimes]. Therefore, if you decide that the main accusation has not been proved beyond a reasonable doubt, you will next need to decide if the defendant is guilty of any lesser included crime. The lesser crimes indicated in the definition of BATTERY ON PERSON 65 YEARS OF AGE OR OLDER are: Battery

3.5(a) PRINCIPALS
F.S. 777.011

If the defendant helped another person or persons *[commit] [attempt to commit] a crime, the defendant is a principal and must be treated as if he had done all the things the other person or persons did if

1. the defendant had a conscious intent that the criminal act be done and
2. the defendant did some act or said some word which was intended to and which did incite, cause, encourage, assist or advise the other person or persons to actually *[commit] [attempt to commit] the crime.

To be a principal, the defendant does not have to be present when the crime is *[committed] [or] [attempted]. *See State v. Dene, 533 So.2d 265 (Fla. 1988).*

3.7 PLEA OF NOT GUILTY; REASONABLE DOUBT;
AND BURDEN OF PROOF

The defendant has entered a plea of not guilty. This means you must presume or believe the defendant is innocent. The presumption stays with the defendant as to each material allegation in the , through each stage of the trial unless it has been overcome by the evidence to the exclusion of and beyond a reasonable doubt.

To overcome the defendant's presumption of innocence the State has the burden of proving the crime with which the defendant is charged was committed and the defendant is the person who committed the crime.

The defendant is not required to present evidence or prove anything.

Whenever the words "reasonable doubt" are used you must consider the following:

A reasonable doubt is not a mere possible doubt, a speculative, imaginary or forced doubt. Such a doubt must not influence you to return a verdict of not guilty if you have an abiding conviction of guilt. On the other hand, if, after carefully considering, comparing and weighing all the evidence, there is not an abiding conviction of guilt, or, if, having a conviction, it is one which is not stable but one which wavers and vacillates, then the charge is not proved beyond every reasonable doubt and you must find the defendant not guilty because the doubt is reasonable.

It is to the evidence introduced in this trial, and to it alone, that you are to look for that proof.

A reasonable doubt as to the guilt of the defendant may arise from the evidence, conflict in the evidence or the lack of evidence.

If you have a reasonable doubt, you should find the defendant not guilty. If you have no reasonable doubt, you should find the defendant guilty.

3.9 WEIGHING THE EVIDENCE

It is up to you to decide what 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 considering your verdict. 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. Does the witness' testimony agree with the other testimony and other evidence in the case?
6. Has 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' testimony?
8. Did the witness at some other time make a statement that is inconsistent with the testimony given in court?
9. Was it proved that the witness had been convicted of a crime?
10. Was it proved that the general reputation of the witness for telling the truth and being honest was bad?

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

3.9(a) 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 the person to be an expert.

Like other witnesses, you may believe or disbelieve all or any part of an expert's testimony.

3.9(c) DEFENDANT TESTIFYING

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

3.9(d) DEFENDANT NOT TESTIFYING

The constitution requires the State to prove its accusations against the defendant. It is not necessary for the defendant to disprove anything. Nor is the defendant required to prove his innocence. It is up to the State to prove the defendant's guilt by evidence.

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

3.9(e) DEFENDANT'S STATEMENTS

A statement claimed to have been made by the defendant outside of court has been placed before you. Such a statement should always be considered with caution and be weighed with great care to make certain it was freely and voluntarily made.

Therefore, you must determine from the evidence that the defendant's alleged statement was knowingly, voluntarily and freely made.

In making this determination, you should consider the total circumstances, including but not limited to:

1. Whether, when the defendant made the statement, he had been threatened in order to get him to make it, and
2. Whether anyone had promised him anything in order to get him to make it.

If you conclude the defendant's out of court statement was not freely and voluntarily made, you should disregard it.

3.10 RULES FOR DELIBERATION

These are some general rules that apply to your discussion. You must follow these rules in order to return a lawful verdict:

1. You must follow the law as it is set out in these instructions. If you fail to follow the law, your verdict 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 a wise and legal decision in this matter.
2. This case must be decided only upon the evidence that you have heard from the testimony of the witnesses [and have seen in the form of the exhibits in evidence] and these instructions.
3. This case must not be decided for or against anyone because 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 decision in this case.
5. Your duty is to determine if the defendant has been proven guilty or not, in accord with the law. It is the judge's job to determine a proper sentence if the defendant is found guilty.
6. Whatever verdict you render must be unanimous, that is, each juror must agree to the same verdict.
7. 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 or her testimony.
8. Your verdict should not be influenced by feelings of prejudice, bias, or sympathy. Your verdict must be based on the evidence, and on the law contained in these instructions.

3.11 CAUTIONARY INSTRUCTION

Deciding a verdict is exclusively your job. I cannot participate in that decision in any way. Please disregard anything I may have said or done that made you think I preferred one verdict over another.

3.12 VERDICT

You may find the defendant guilty as charged in the information or guilty of such lesser included crime as the evidence may justify or not guilty.

If you return a verdict of guilty, it should be for the highest offense which has been proven beyond a reasonable doubt. If you find that no offense has been proven beyond a reasonable doubt, then, of course, your verdict must be not guilty.

Only one verdict may be returned as to the crime charged. This verdict must be unanimous; that is, all of you must agree to the same verdict. The verdict must be in writing and for your convenience the necessary form of verdict has been prepared for you. It is as follows **[read verdict forms]**:

3.12(a) SINGLE DEFENDANT,
MULTIPLE COUNTS OR INFORMATIONS

A separate crime is charged in each [count of the information] [indictment] [information] and, although they have been tried together, each crime and the evidence applicable to it must be considered separately and a separate verdict returned as to each. A finding of guilty or not guilty as to one crime must not affect your verdict as to the other crime(s) charged.

3.13 SUBMITTING CASE TO JURY

In just a few moments you will be taken to the jury room by the bailiff. The first thing you should do is elect a foreperson who will preside over your deliberations, like a chairperson of a meeting. It is the foreperson's job to sign and date the verdict form when all of you have agreed on a verdict in this case and to bring the verdict back to the courtroom when you return.

Your verdict finding the defendant either guilty or not guilty must be unanimous. The verdict must be the verdict of each juror, as well as of the jury as a whole.

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. Until you have reached a verdict, 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. 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 bailiff.

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

5.1 ATTEMPT TO COMMIT CRIME
F.S.777.04(1)

[To prove the crime of Attempt to Commit BATTERY ON PERSON 65 YEARS OF AGE OR OLDER the State must prove the following two elements beyond a reasonable doubt:]

In order to prove that the defendant attempted to commit the crime of BATTERY ON PERSON 65 YEARS OF AGE OR OLDER, the State must prove the following beyond a reasonable doubt:

1. JEFFREY STEPHEN GOZZO did some act toward committing the crime of BATTERY ON PERSON 65 YEARS OF AGE OR OLDER that went beyond just thinking or talking about it.
2. he would have committed the crime except that

[someone prevented him from committing the crime of BATTERY ON PERSON 65 YEARS OF AGE OR OLDER.]

[he failed.]

Defense. § 777.04(5)(a), Fla.Stat.

It is not an attempt to commit BATTERY ON PERSON 65 YEARS OF AGE OR OLDER if the defendant abandoned his attempt to commit the offense or otherwise prevented its commission, under circumstances indicating a complete and voluntary renunciation of his criminal purpose.

1.1 INTRODUCTION

In order to have a fair and lawful trial, there are rules that all jurors must follow. A basic rule is that jurors must decide the case only on the evidence presented in the courtroom. You must not communicate with anyone, including friends and family members, about this case, the people and places involved, or your jury service. You must not disclose your thoughts about this case or ask for advice on how to decide this case.

I want to stress that this rule means you must not use electronic devices or computers to communicate about this case, including tweeting, texting, blogging, e-mailing, posting information on a website or chat room, or any other means at all. Do not send or accept any messages to or from anyone about this case or your jury service.

You must not do any research or look up words, names, [maps], or anything else that may have anything to do with this case. This includes reading newspapers, watching television or using a computer, cell phone, the Internet, any electronic device, or any other means at all, to get information related to this case or the people and places involved in this case. This applies whether you are in the courthouse, at home, or anywhere else.

All of us are depending on you to follow these rules, so that there will be a fair and lawful resolution to this case. Unlike questions that you may be allowed to ask in court, which will be answered in court in the presence of the judge and the parties, if you investigate, research or make inquiries on your own outside of the courtroom, the trial judge has no way to assure they are proper and relevant to the case. The parties likewise have no opportunity to dispute the accuracy of what you find or to provide rebuttal evidence to it. That is contrary to our judicial system, which assures every party the right to ask questions about and rebut the evidence being considered against it and to present argument with respect to that evidence. Non-court inquiries and investigations unfairly and improperly prevent the parties from having that opportunity our judicial system promises. If you become aware of any violation of these instructions or any other instruction I give in this case, you must tell me by giving a note to the bailiff.

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT, CRIMINAL DIVISION
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. 11CF004566AMB DIV "V"

STATE OF FLORIDA

vs.

JEFFREY STEPHEN GOZZO,

Defendant.

_____ /

VERDICT

WE, THE JURY, FIND as follows:

As to Count I, we find the Defendant

_____ Guilty of Battery on Person 65 Years of Age or Older, as charged in the
Information.

_____ Not Guilty.

SO SAY WE ALL, this _____ day of September, 2011, in West Palm Beach, Palm
Beach County, Florida.

JURY FOREPERSON SIGNATURE

PRINT NAME

8.16 BATTERY ON PERSON 65 YEARS OF AGE OR OLDER
§ 784.08(2)(c), Fla.Stat.

To prove the crime of Battery of a Person 65 years of age or older, the State must prove the following two elements beyond a reasonable doubt:

1. JEFFREY STEPHEN GOZZO intentionally
*[touched or struck HENRY LEON KAYE against *(his/her) will.]
*[caused bodily harm to HENRY LEON KAYE.]
2. HENRY LEON KAYE was at the time 65 years of age or older.

8.3 BATTERY
F.S.784.03

To prove the crime of Battery, the State must prove the following element beyond a reasonable doubt:

Give 1 or 2 as applicable.

1. *[JEFFREY STEPHEN GOZZO intentionally touched or struck HENRY LEON KAYE against *[his/her] will.]
2. *[JEFFREY STEPHEN GOZZO intentionally caused bodily harm to HENRY LEON KAYE.]

