

PRESUMPTION OF INNOCENCE, BURDEN OF PROOF,  
AND REASONABLE DOUBT

1. A fundamental principle of our system of criminal law is that the defendant is presumed to be innocent. The mere fact that [he] [she] was arrested and is accused of a crime is not any evidence against [him] [her]. Furthermore, the defendant is presumed innocent throughout the trial and unless and until you conclude, based on careful and impartial consideration of the evidence, that the Commonwealth has proven [him] [her] guilty beyond a reasonable doubt.

2. It is not the defendant's burden to prove that [he] [she] is not guilty. Instead, it is the Commonwealth that always has the burden of proving each and every element of the crime charged and that the defendant is guilty of that crime beyond a reasonable doubt. The person accused of a crime is not required to present evidence or prove anything in his or her own defense. If the Commonwealth's evidence fails to meet its burden, then your verdict must be not guilty. On the other hand, if the Commonwealth's evidence does prove beyond a reasonable doubt that the defendant is guilty, then your verdict should be guilty.

3. Although the Commonwealth has the burden of proving that the defendant is guilty, this does not mean that the Commonwealth must prove its case beyond all doubt and to a mathematical certainty, nor must it demonstrate the complete impossibility of innocence. A reasonable doubt is a doubt that would cause a reasonably careful and sensible person to hesitate before acting upon a matter of importance in his or her own affairs. A reasonable doubt must fairly arise out of the evidence that was presented or out of the lack of evidence presented with respect to some element of the crime. A reasonable doubt must be a real doubt; it may not be an imagined one, nor may it be a doubt manufactured to avoid carrying out an unpleasant duty.

4. So, to summarize, you may not find the defendant guilty based on a mere suspicion of guilt. The Commonwealth has the burden of proving the defendant guilty beyond a reasonable doubt. If it meets that burden, then the defendant is no longer presumed innocent and you should find [him] [her] guilty. On the other hand, if the Commonwealth does not meet its burden, then you must find [him] [her] not guilty.

## CRIMINAL HOMICIDE -- GENERAL

1. The defendant is charged with taking the life of George Monroe by criminal homicide. There are four possible verdicts that you might reach in this case – guilty or not guilty of the following two types of homicide: (a) murder in the first degree; or (b) murder in the third degree.

2. Before defining these two crimes, I will tell you about malice. A person who kills must act with malice to be guilty of any degree of murder. The word “malice,” as I am using it, has a special legal meaning. It does not mean simply hatred, spite, or ill-will. Malice is a shorthand way of referring to any of three different mental states that the law regards as being bad enough to make a killing murder. The type of malice differs for each degree of murder.

3. For murder of the *first degree*, a killing is with malice if the perpetrator acts with a specific intent to kill, or as I will explain later in my definition of first-degree murder, the killing is willful, deliberate, and premeditated.

4. For murder of the *third degree*, a killing is with malice if the perpetrator’s actions show his or her wanton and willful disregard of an unjustified and extremely high risk that his or her conduct would result in death or serious bodily injury to another. In this form of malice, the Commonwealth need not prove that the perpetrator specifically intended to kill another. The Commonwealth must prove, however, that he or she took action while consciously, that is, knowingly, disregarding the most serious risk he or she was creating, and that, by his or her disregard of that risk, he or she demonstrated his or her extreme indifference to the value of human life.

5. When deciding whether the defendant acted with the requisite malice, you should consider all the evidence regarding [his] [her] words, conduct, and the attending circumstances that may show [his] [her] state of mind.

6. A killing is without malice if the perpetrator acts with lawful justification or excuse. Lawful justification or excuse not only negates malice but also is a complete defense to any charge of criminal homicide. I shall say more about this when I charge you on the defense of self-defense.

## FIRST-DEGREE MURDER

1. The defendant has been charged with the offense of first-degree murder. First-degree murder is a murder in which the perpetrator has the specific intent to kill. To find the defendant guilty of this offense, you must find that the following three elements have been proven beyond a reasonable doubt:

*First*, that George Monroe is dead;

*Second*, that the defendant killed him; and

*Third*, that the defendant did so with the specific intent to kill and with malice.

2. A person has the specific intent to kill if he or she has a fully formed intent to kill and is conscious of his or her own intention. As my earlier definition of malice indicates, a killing by a person who has the specific intent to kill is a killing with malice, provided that it is also without any lawful justification or excuse.

3. Stated differently, a killing is with specific intent to kill if it is willful, deliberate, and premeditated.

4. The specific intent to kill (including the premeditation) needed for first-degree murder does not require planning or previous thought or any particular length of time. It can occur quickly. All that is necessary is that there be time enough so that the defendant can and does fully form an intent to kill and is conscious of that intention.

5. When deciding whether the defendant had the specific intent to kill, you should consider all the evidence regarding [his] [her] words and conduct and the attending circumstances that may show [his] [her] state of mind.

## THIRD-DEGREE MURDER

1. The defendant has also been charged with third-degree murder. To find the defendant guilty of this offense, you must find that the following three elements have been proven beyond a reasonable doubt:

*First*, that George Monroe is dead;

*Second*, that the defendant killed him; and

*Third*, that the defendant did so with malice.

2. Again, the word “malice” as I am using it has a special legal meaning. It does not mean simply hatred, spite, or ill-will. For murder of the third degree, a killing is with malice if the perpetrator’s actions show his or her wanton and willful disregard of an unjustified and extremely high risk that his or her conduct would result in death or serious bodily injury to another. In this form of malice, the Commonwealth need not prove that the perpetrator specifically intended to kill another. The Commonwealth must prove, however, that the perpetrator took action while consciously, that is, knowingly, disregarding the most serious risk he or she was creating, and that, by his or her disregard of that risk, the perpetrator demonstrated his or her extreme indifference to the value of human life.

#### JUSTIFICATION: USE OF FORCE/DEADLY FORCE IN SELF-DEFENSE

The defendant has raised the issue of whether [he] [she] acted in self-defense. Self-defense is called “justification” in the law of Pennsylvania. If the defendant’s actions were “justified,” you cannot find [him] [her] guilty beyond a reasonable doubt. The issue having been raised, it is the Commonwealth’s burden to prove beyond a reasonable doubt that the defendant did not act in justifiable self-defense.

#### RULES FOR JUSTIFICATION WHEN DEADLY FORCE WAS USED

1. If the Commonwealth proves to you beyond a reasonable doubt that the defendant used deadly force, then to prove that such force was not justifiable in this case, it must prove one of the following elements beyond a reasonable doubt:

a. That the defendant did not reasonably believe that [he] [she] was in immediate danger of death or serious bodily injury (or kidnapping or sexual intercourse compelled by force or threat) from George Monroe at the time [he] [she] used the force and that, therefore, [his] [her] belief that it was necessary for [him] [her] to use deadly force to protect [himself] [herself] was unreasonable. Put another way, the Commonwealth must prove either: (i) that the defendant did not actually believe [he] [she] was in danger of death or serious bodily injury such

that [he] [she] needed to use deadly force to defend [himself] [herself] at that moment; or, (ii) that while the defendant actually believed [he] [she] needed to use such force, [his] [her] belief was unreasonable in light of all the circumstances known to [him] [her].

Keep this in mind: a person is justified in using deadly force against another not only when they are in actual danger of unlawful attack but also when they mistakenly, but reasonably, believe that they are. A person is entitled to estimate the necessity for the force he or she employs under the circumstances as he or she reasonably believes them to be at the time. In the heat of conflict, a person who has been attacked ordinarily has neither time nor composure to evaluate carefully the danger and make nice judgments about exactly how much force is needed to protect himself or herself. Consider the realities of the situation faced by the defendant here when you assess whether the Commonwealth has proved beyond a reasonable doubt either that [he] [she] did not believe [he] [she] was actually in danger of death or serious bodily injury to the extent that [he] [she] needed to use such force in self-defense, or that, while [he] [she] did believe that, [his] [her] belief was unreasonable; OR

b. That the defendant knew that [he] [she] could avoid the necessity of using deadly force with complete safety by: (1) retreating, but that [he] [she] failed to do so. However, the defendant is not obligated to retreat from [his] [her] own dwelling, that is, any building or structure though movable or temporary, or a portion thereof, including the doorway, that is, at least for the time being, the defendant's home or place of lodging, unless [he] [she] was the initial aggressor in the incident.

## CREDIBILITY OF WITNESSES

1. As judges of the facts, you are sole judges of the credibility of the witnesses and their testimony. This means you must judge the truthfulness and accuracy of each witness's testimony and decide whether to believe all or part or none of that testimony. The following are some of the factors that you may and should

consider when judging credibility and deciding whether or not to believe testimony:

- a. Was the witness able to see, hear, or know the things about which [he] [she] testified?
- b. How well could the witness remember and describe the things about which [he] [she] testified?
- c. Was the ability of the witness to see, hear, know, remember, or describe those things affected by youth, old age, or by any physical, mental, or intellectual deficiency?
- d. Did the witness testify in a convincing manner? How did [he] [she] look, act, and speak while testifying? Was [his] [her] testimony uncertain, confused, self-contradictory, or evasive?
- e. Did the witness have any interest in the outcome of the case, bias, prejudice, or other motive that might affect [his] [her] testimony?
- f. How well does the testimony of the witness square with the other evidence in the case, including the testimony of other witnesses? Was it contradicted or supported by the other testimony and evidence? Does it make sense?

2. As sole judges of credibility and fact, you, the jurors, are responsible to give the testimony of every witness, and all the other evidence, whatever credibility and weight you think it deserves.

#### FALSE IN ONE, FALSE IN ALL

If you decide that a witness deliberately testified falsely about a material point (that is, about a matter that could affect the outcome of this trial), you may for that reason alone choose to disbelieve the rest of his or her testimony. But you are not required to do so. You should consider not only the deliberate falsehood but also all other factors bearing on the witness's credibility in deciding whether to believe other parts of [his] [her] testimony.

## CONFLICTING TESTIMONY

1. Where there is a conflict in the testimony, the jury has the duty of deciding which testimony to believe. But you should first try to reconcile, that is, fit together, any conflicts in the testimony if you can fairly do so.

2. Discrepancies and conflicts between the testimony of different witnesses may or may not cause you to disbelieve some or all of their testimony. Remember that two or more persons witnessing an incident may see or hear it happen differently; also, it is not uncommon for a witness to be innocently mistaken in his or her recollection of how something happened.

3. If you cannot reconcile a conflict in the testimony, it is up to you to decide which testimony, if any, to believe and which to reject as untrue or inaccurate.

4. In making this decision, consider whether the conflict involves a matter of importance or merely some detail and whether the conflict is brought about by an innocent mistake or by an intentional falsehood. You should also keep in mind the other factors already discussed, which go into deciding whether or not to believe a witness.

5. In deciding which of conflicting testimony to believe, you should not necessarily be swayed by the number of witnesses on either side. You may find that the testimony of a few witnesses, even of just one witness, is more believable than the opposing testimony of a greater number of witnesses. On the other hand, you should also consider the extent to which conflicting testimony is supported by other evidence.

## CREDIBILITY OF DEFENDANT AS WITNESS

1. The defendant took the stand as a witness. In considering the defendant's testimony, you are to follow the general instructions I gave you for judging the credibility of any witness.

2. You should not disbelieve the defendant's testimony merely because [he] [she] is the defendant. In weighing [his] [her] testimony, however, you may consider the fact that [he] [she] has a vital interest in the outcome of this trial. You may take the defendant's interest into account, just as you would the interest of any other witness,

along with all other facts and circumstances bearing on credibility in making up your minds what weight [his] [her] testimony deserves.

## EXPERT TESTIMONY

1. In this case, you heard expert testimony.
2. An expert witness is a person who has special knowledge or skill in some science, art, profession, occupation, or subject that the witness acquired by training, education, or experience. Because an expert has “special”—that is, “out of the ordinary”—knowledge or skill, he or she may be able to supply jurors with specialized information, explanations, and opinions that will help them decide a case.
3. Regular witnesses are bound by two limitations that do not apply to an expert. First, regular witnesses generally can testify only about things that they personally perceived—things that they saw and heard themselves. And second, regular witnesses are not allowed to express *opinions* about matters that require special knowledge or skill. By contrast, an expert is allowed to express an *opinion* about a matter that is within the area of his or her expertise. Furthermore, while an expert may base an opinion on things personally perceived, he or she may also base an opinion on factual information learned from other sources. If an expert witness bases an opinion on things not personally perceived, he or she can describe the information on which he or she relies, and identify its source, when explaining the opinion.
4. Remember, you jurors are the sole judges of the credibility and weight of all testimony. The fact that the lawyers and I may have referred to certain witnesses as “experts,” and that the witnesses may have special knowledge or skill, does not mean that their testimony and opinions are right. When you are determining the credibility and weight of an expert’s testimony and opinions, consider all the factors that I described earlier that are relevant when evaluating the testimony of any witness. You should also consider all other things bearing on credibility and weight, including the training, education, experience, and ability of each expert, the factual information on which he or she based an opinion, the source and reliability of that information, and the reasonableness of any explanation he or she gave to support the opinion.