

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.

STATEMENT OF CHARGE

ADAM MATOS, the defendant in this case, has been accused of the crimes of Murder in the First Degree (Count 1), Murder in the First Degree (Count 2), Murder in the First Degree (Count 3), Murder in the First Degree (Count 4).

FILED IN OPEN COURT
THIS 16 DAY OF November, 20 17
PAULAS, ONEIL, CLERK & COMPTROLLER
PASCO COUNTY, FLORIDA
B. [REDACTED] D.C.

INTRODUCTION TO HOMICIDE

In this case ADAM MATOS is accused of four counts of Murder in the First Degree.

Murder in the First Degree includes the lesser crimes of Murder in the Second Degree and Manslaughter both of which are unlawful.

A killing that is excusable or was committed by the use of justifiable deadly force is lawful.

If you find Nicholas Leonard, Megan Brown, Gregory Brown, or Margaret Brown were killed by ADAM MATOS, you will then consider the circumstances surrounding each individual killing in deciding if each individual killing was Murder in the First Degree or was Murder in the Second Degree, Manslaughter, or whether the killing was excusable or resulted from justifiable use of deadly force in each case.

JUSTIFIABLE HOMICIDE

The killing of a human being is justifiable homicide and lawful if necessarily done while resisting an attempt to murder or commit a felony upon the defendant, or to commit a felony in any dwelling house in which the defendant was at the time of the killing.

EXCUSABLE HOMICIDE

The killing of a human being is excusable, and therefore lawful, under any one of the following three circumstances:

1. When the killing is committed by accident and misfortune in doing any lawful act by lawful means with usual ordinary caution and without any unlawful intent, or
2. When the killing occurs by accident and misfortune in the heat of passion, upon any sudden and sufficient provocation, or

3. When the killing is committed by accident and misfortune resulting from a sudden combat, if a dangerous weapon is not used and the killing is not done in a cruel or unusual manner.

"Dangerous weapon" is any weapon that, taking into account the manner in which it is used, is likely to produce death or great bodily harm.

I now instruct you on the circumstances that must be proved before ADAM MATOS may be found guilty of any Murder in the First Degree or any lesser included crime.

COUNT 1 MURDER IN THE FIRST DEGREE

To prove the crime of Murder in the First Degree, the State must prove the following three elements beyond a reasonable doubt:

1. Nicholas Leonard is dead.
2. The death was caused by the criminal act of ADAM MATOS.
3. There was a premeditated killing of Nicholas Leonard.

An “act” includes a series of related actions arising from and performed pursuant to a single design or purpose.

“Killing with premeditation” is killing after consciously deciding to do so. The decision must be present in the mind at the time of the killing. The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the killing. The period of time must be long enough to allow reflection by the defendant. The premeditated intent to kill must be formed before the killing.

The question of premeditation is a question of fact to be determined by you from the evidence. It will be sufficient proof of premeditation if the circumstances of the killing and the conduct of the accused convince you beyond a reasonable doubt of the existence of premeditation at the time of the killing.

If a person has a premeditated design to kill one person and in attempting to kill that person actually kills another person, the killing is premeditated.

An issue in this case is whether ADAM MATOS did not act with a premeditated design to kill because he acted in the heat of passion based on adequate provocation. In order to find that the defendant did not act with a premeditated design to kill because he acted in the heat of passion based on adequate provocation:

- a. there must have been a sudden event that would have suspended the exercise of judgment in an ordinary reasonable person; and

- b. a reasonable person would have lost normal self-control and would have been driven by a blind and unreasoning fury; and
- c. there was not a reasonable amount of time for a reasonable person to cool off; and
- d. a reasonable person would not have cooled off before committing the act that caused death; and
- e. ADAM MATOS was, in fact, so provoked and did not cool off before he committed the act that caused the death of Nicholas Leonard.

If you have a reasonable doubt about whether the defendant acted with a premeditated design to kill because he acted in the heat of passion based on adequate provocation, you should not find him guilty of Murder in the First Degree.

COUNT 2 MURDER IN THE FIRST DEGREE

To prove the crime of First Degree Premeditated Murder, the State must prove the following three elements beyond a reasonable doubt:

1. Megan Brown is dead.
2. The death was caused by the criminal act of ADAM MATOS.
3. There was a premeditated killing of Megan Brown.

An “act” includes a series of related actions arising from and performed pursuant to a single design or purpose.

“Killing with premeditation” is killing after consciously deciding to do so. The decision must be present in the mind at the time of the killing. The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the killing. The period of time must be long enough to allow reflection by the defendant. The premeditated intent to kill must be formed before the killing.

The question of premeditation is a question of fact to be determined by you from the evidence. It will be sufficient proof of premeditation if the circumstances of the killing and the conduct of the accused convince you beyond a reasonable doubt of the existence of premeditation at the time of the killing.

If a person has a premeditated design to kill one person and in attempting to kill that person actually kills another person, the killing is premeditated.

An issue in this case is whether ADAM MATOS did not act with a premeditated design to kill because he acted in the heat of passion based on adequate provocation. In order to find that the defendant did not act with a premeditated design to kill because he acted in the heat of passion based on adequate provocation:

- a. there must have been a sudden event that would have suspended the exercise of judgment in an ordinary reasonable person; and

- b. a reasonable person would have lost normal self-control and would have been driven by a blind and unreasoning fury; and
- c. there was not a reasonable amount of time for a reasonable person to cool off; and
- d. a reasonable person would not have cooled off before committing the act that caused death; and
- e. ADAM MATOS was, in fact, so provoked and did not cool off before he committed the act that caused the death of Megan Brown.

If you have a reasonable doubt about whether the defendant acted with a premeditated design to kill because he acted in the heat of passion based on adequate provocation, you should not find him guilty of Murder in the First Degree.

POSSESSION OF A FIREARM AND DISCHARGE CAUSING DEATH

If you find that ADAM MATOS committed Murder in the First Degree and you also find beyond a reasonable doubt that during the commission of the crime, he personally carried, displayed, used, threatened to use, or attempted to use a firearm, you should find him guilty of Murder in the First Degree with a firearm.

If you find that ADAM MATOS committed Murder in the First Degree but you are not convinced beyond a reasonable doubt that he personally carried, displayed, used, threatened to use, or attempted to use a firearm, then you should find him guilty only of Murder in the First Degree.

If you find that ADAM MATOS committed Murder in the First Degree and you also find beyond a reasonable doubt that during the commission of the crime, he possessed and discharged a firearm, and in doing so, caused the death of Megan Brown, you should find the defendant guilty of Murder in the First Degree with possession and discharge of a firearm causing death.

A "firearm" is legally defined as any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action

of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun.

To “actually possess” a firearm means that the defendant

a. carried a firearm on his person.

or

b. had a firearm within immediate physical reach with ready access with the intent to use the firearm during the commission of the crime.

COUNT 3 MURDER IN THE FIRST DEGREE

To prove the crime of First Degree Premeditated Murder, the State must prove the following three elements beyond a reasonable doubt:

1. Gregory Brown is dead.
2. The death was caused by the criminal act of ADAM MATOS.
3. There was a premeditated killing of Gregory Brown.

An “act” includes a series of related actions arising from and performed pursuant to a single design or purpose.

“Killing with premeditation” is killing after consciously deciding to do so. The decision must be present in the mind at the time of the killing. The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the killing. The period of time must be long enough to allow reflection by the defendant. The premeditated intent to kill must be formed before the killing.

The question of premeditation is a question of fact to be determined by you from the evidence. It will be sufficient proof of premeditation if the circumstances of the killing and the conduct of the accused convince you beyond a reasonable doubt of the existence of premeditation at the time of the killing.

If a person has a premeditated design to kill one person and in attempting to kill that person actually kills another person, the killing is premeditated.

An issue in this case is whether ADAM MATOS did not act with a premeditated design to kill because he acted in the heat of passion based on adequate provocation. In order to find that the defendant did not act with a premeditated design to kill because he acted in the heat of passion based on adequate provocation:

- a. there must have been a sudden event that would have suspended the exercise of judgment in an ordinary reasonable person; and

- b. a reasonable person would have lost normal self-control and would have been driven by a blind and unreasoning fury; and
- c. there was not a reasonable amount of time for a reasonable person to cool off; and
- d. a reasonable person would not have cooled off before committing the act that caused death; and
- e. ADAM MATOS was, in fact, so provoked and did not cool off before he committed the act that caused the death of Gregory Brown.

If you have a reasonable doubt about whether the defendant acted with a premeditated design to kill because he acted in the heat of passion based on adequate provocation, you should not find him guilty of Murder in the First Degree.

POSSESSION OF A FIREARM AND DISCHARGE CAUSING DEATH

If you find that ADAM MATOS committed Murder in the First Degree and you also find beyond a reasonable doubt that during the commission of the crime, he personally carried, displayed, used, threatened to use, or attempted to use a firearm, you should find him guilty of Murder in the First Degree with a firearm.

If you find that ADAM MATOS committed Murder in the First Degree but you are not convinced beyond a reasonable doubt that he personally carried, displayed, used, threatened to use, or attempted to use a firearm, then you should find him guilty only of Murder in the First Degree.

If you find that ADAM MATOS committed Murder in the First Degree and you also find beyond a reasonable doubt that during the commission of the crime, he possessed and discharged a firearm, and in doing so, caused the death of Gregory Brown, you should find the defendant guilty of Murder in the First Degree with possession and discharge of a firearm causing death.

A "firearm" is legally defined as any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action

of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun.

To “actually possess” a firearm means that the defendant

a. carried a firearm on his person.

or

b. had a firearm within immediate physical reach with ready access with the intent to use the firearm during the commission of the crime.

COUNT 4 MURDER IN THE FIRST DEGREE

To prove the crime of First Degree Premeditated Murder, the State must prove the following three elements beyond a reasonable doubt:

1. Margaret Brown is dead.
2. The death was caused by the criminal act of ADAM MATOS.
3. There was a premeditated killing of Margaret Brown.

An “act” includes a series of related actions arising from and performed pursuant to a single design or purpose.

“Killing with premeditation” is killing after consciously deciding to do so. The decision must be present in the mind at the time of the killing. The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the killing. The period of time must be long enough to allow reflection by the defendant. The premeditated intent to kill must be formed before the killing.

The question of premeditation is a question of fact to be determined by you from the evidence. It will be sufficient proof of premeditation if the circumstances of the killing and the conduct of the accused convince you beyond a reasonable doubt of the existence of premeditation at the time of the killing.

If a person has a premeditated design to kill one person and in attempting to kill that person actually kills another person, the killing is premeditated.

An issue in this case is whether ADAM MATOS did not act with a premeditated design to kill because he acted in the heat of passion based on adequate provocation. In order to find that the defendant did not act with a premeditated design to kill because he acted in the heat of passion based on adequate provocation:

- a. there must have been a sudden event that would have suspended the exercise of judgment in an ordinary reasonable person; and

- b. a reasonable person would have lost normal self-control and would have been driven by a blind and unreasoning fury; and
- c. there was not a reasonable amount of time for a reasonable person to cool off; and
- d. a reasonable person would not have cooled off before committing the act that caused death; and
- e. ADAM MATOS was, in fact, so provoked and did not cool off before he committed the act that caused the death of Margaret Brown.

If you have a reasonable doubt about whether the defendant acted with a premeditated design to kill because he acted in the heat of passion based on adequate provocation, you should not find him guilty of Murder in the First Degree.

JUSTIFIABLE USE OF DEADLY FORCE

It is a defense to the crimes of Murder in the Degree if the actions of ADAM MATOS constituted the justifiable use of deadly force.

“Deadly force” means force likely to cause death or great bodily harm.

The use of deadly force is justifiable if the defendant reasonably believed that the force was necessary to prevent imminent death or great bodily harm to himself while resisting:

1. another’s attempt to murder him, or
2. any attempt to commit felony battery upon him, or in any dwelling occupied by him.

A person commits felony battery if he or she:

1. actually and intentionally touched or struck a person against the will of the other; and
2. causes great bodily harm, permanent disability, or permanent disfigurement.

ADAM MATOS was justified in using deadly force if he reasonably believed that such force was necessary to prevent imminent death or great bodily harm to himself. If ADAM MATOS was not otherwise engaged in criminal activity and was in a place he had a right to be, then he had no duty to retreat and had the right to stand his ground.

In deciding whether ADAM MATOS was justified in the use of deadly force, you must consider the circumstances by which he was surrounded at the time the force was used. The danger need not have been actual; however, to justify the use of deadly force, the appearance of danger must have been so real that a reasonably cautious and prudent person under the same circumstances would have believed that the danger could be avoided only through the use of that force. Based upon appearances, ADAM MATOS must have actually believed that the danger was real. However, the defendant had no duty to retreat if he was not otherwise engaged in criminal activity and was in a place where he had a right to be.

ADAM MATOS is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself when using defensive force that was intended or likely to cause death or great bodily harm to another if:

- a. The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered; and
- b. ADAM MATOS knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

The presumption of reasonable fear of imminent death or great bodily harm does not apply if:

- a. the person against whom the defensive force is used has the right to be in or is a lawful resident of the dwelling, such as an owner, lessee, or titleholder, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person; or
- b. the person who uses defensive force is engaged in a criminal activity or is using the dwelling to further a criminal activity.

A person who unlawfully and by force enters or attempts to enter another's dwelling is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

"Dwelling" means a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent or mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.

However, the use of deadly force is not justified if you find that ADAM MATOS used force to initially provoke the use of force against himself, unless:

1. The force or threat of force asserted toward the defendant was so great that he reasonably believed that he was in imminent danger of death or great bodily harm and had exhausted every reasonable means to escape the danger, other than using deadly force on the victim.

2. In good faith, ADAM MATOS withdrew from physical contact with the victim and clearly indicated to the victim that he wanted to withdraw and stop the use of deadly force, but the victim continued or resumed the use of force.

In considering the issue of self-defense, you may take into account the relative physical abilities and capacities of the defendant and victim.

If in your consideration of the issue of self-defense you have a reasonable doubt on the question of whether the defendant was justified in the use of deadly force, you should find the defendant not guilty.

However, if from the evidence you are convinced beyond a reasonable doubt that the defendant was not justified in the use of deadly force, you should find him guilty if all the elements of the charge have been proved.

ABNORMAL MENTAL CONDITION

Mental illness, an abnormal mental condition, or diminished mental capacity is not a defense to any crime in this case. Any such evidence may not be taken into consideration to show that the defendant lacked the specific intent or did not have the state of mind essential to proving that he committed the crimes charged or any lesser crime.

**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 crimes 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 Murder in the First Degree are:

- Count 1: Murder in the Second Degree and Manslaughter
- Count 2: Murder in the Second Degree and Manslaughter
- Count 3: Murder in the Second Degree and Manslaughter
- Count 4: Murder in the Second Degree and Manslaughter

LESSER INCLUDED MURDER IN THE SECOND DEGREE (COUNT 1)

To prove the crime of Murder in the Second Degree, the State must prove the following three elements beyond a reasonable doubt:

1. Nicholas Leonard is dead.
2. The death was caused by the criminal act of ADAM MATOS.
3. There was an unlawful killing of Nicholas Leonard by an act imminently dangerous to another and demonstrating a depraved mind without regard for human life.

An “act” includes a series of related actions arising from and performed pursuant to a single design or purpose.

An act is “imminently dangerous to another and demonstrating a depraved mind” if it is an act or series of acts that:

1. a person of ordinary judgment would know is reasonably certain to kill or do serious bodily injury to another, and
2. is done from ill will, hatred, spite, or an evil intent, and
3. is of such a nature that the act itself indicates an indifference to human life.

In order to convict of Murder in the Second Degree, it is not necessary for the State to prove the defendant had an intent to cause death.

An issue in this case is whether ADAM MATOS did not have a depraved mind without regard for human life because he acted in the heat of passion based on adequate provocation. In order to find that the defendant did not have a depraved mind without regard for human life because he acted in the heat of passion based on adequate provocation:

- a. there must have been a sudden event that would have suspended the exercise of judgment in an ordinary reasonable person; and

- b. a reasonable person would have lost normal self-control and would have been driven by a blind and unreasoning fury; and
- c. there was not a reasonable amount of time for a reasonable person to cool off; and
- d. a reasonable person would not have cooled off before committing the act that caused death; and
- e. ADAM MATOS was, in fact, so provoked and did not cool off before he committed the act that caused the death of Nicholas Leonard.

If you have a reasonable doubt about whether the defendant had a depraved mind without regard for human life because he acted in the heat of passion based on adequate provocation, you should not find him guilty of Murder in the Second Degree.

LESSER INCLUDED MANSLAUGHTER (COUNT 1)

To prove the crime of Manslaughter, the State must prove the following two elements beyond a reasonable doubt:

1. Nicholas Leonard is dead.
2. ADAM MATOS intentionally committed an act or acts that caused the death of Nicholas Leonard.

The defendant cannot be guilty of manslaughter by committing a merely negligent act or if the killing was either justifiable or excusable homicide, as I have previously instructed you on page 2 (Introduction to Homicide).

Each of us has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence.

In order to convict of manslaughter by act, it is not necessary for the State to prove that the defendant had an intent to cause death, only an intent to commit an act that was not merely negligent, justified, or excusable and which caused death.

LESSER INCLUDED MURDER IN THE SECOND DEGREE (COUNT 2)

To prove the crime of Murder in the Second Degree, the State must prove the following three elements beyond a reasonable doubt:

1. Megan Brown is dead.
2. The death was caused by the criminal act of ADAM MATOS.
3. There was an unlawful killing of Megan Brown by an act imminently dangerous to another and demonstrating a depraved mind without regard for human life.

An “act” includes a series of related actions arising from and performed pursuant to a single design or purpose.

An act is “imminently dangerous to another and demonstrating a depraved mind” if it is an act or series of acts that:

1. a person of ordinary judgment would know is reasonably certain to kill or do serious bodily injury to another, and
2. is done from ill will, hatred, spite, or an evil intent, and
3. is of such a nature that the act itself indicates an indifference to human life.

In order to convict of Murder in the Second Degree, it is not necessary for the State to prove the defendant had an intent to cause death.

An issue in this case is whether ADAM MATOS did not have a depraved mind without regard for human life because he acted in the heat of passion based on adequate provocation. In order to find that the defendant did not have a depraved mind without regard for human life because he acted in the heat of passion based on adequate provocation:

- a. there must have been a sudden event that would have suspended the exercise of judgment in an ordinary reasonable person; and

- b. a reasonable person would have lost normal self-control and would have been driven by a blind and unreasoning fury; and
- c. there was not a reasonable amount of time for a reasonable person to cool off; and
- d. a reasonable person would not have cooled off before committing the act that caused death; and
- e. ADAM MATOS was, in fact, so provoked and did not cool off before he committed the act that caused the death of Megan Brown.

If you have a reasonable doubt about whether the defendant had a depraved mind without regard for human life because he acted in the heat of passion based on adequate provocation, you should not find him guilty of Murder in the Second Degree.

POSSESSION OF A FIREARM AND DISCHARGE CAUSING DEATH

If you find that ADAM MATOS committed Murder in the Second Degree and you also find beyond a reasonable doubt that during the commission of the crime, he personally carried, displayed, used, threatened to use, attempted to use a firearm, you should find him guilty of Murder in the Second Degree with a firearm.

If you find that ADAM MATOS committed Murder in the Second Degree but you are not convinced beyond a reasonable doubt that he personally carried, displayed, used, threatened to use, attempted to use, a firearm, then you should find him guilty only of Murder in the Second Degree.

If you find that ADAM MATOS committed Murder in the Second Degree and you also find beyond a reasonable doubt that during the commission of the crime, he possessed and discharged a firearm, and in doing so, caused the death of Megan Brown, you should find the defendant guilty of Murder in the Second Degree with possession and discharge of a firearm causing death.

A "firearm" is legally defined as any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action

of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun.

To “actually possess” a firearm means that the defendant

a. carried a firearm on his person.

or

b. had a firearm within immediate physical reach with ready access with the intent to use the firearm during the commission of the crime.

LESSER INCLUDED MANSLAUGHTER (COUNT 2)

To prove the crime of Manslaughter, the State must prove the following two elements beyond a reasonable doubt:

1. Megan Brown is dead.
2. ADAM MATOS intentionally committed an act or acts that caused the death of Megan Brown.

The defendant cannot be guilty of manslaughter by committing a merely negligent act or if the killing was either justifiable or excusable homicide, as I have previously instructed you on page 2 (Introduction to Homicide).

Each of us has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence.

In order to convict of manslaughter by act, it is not necessary for the State to prove that the defendant had an intent to cause death, only an intent to commit an act that was not merely negligent, justified, or excusable and which caused death.

POSSESSION OF A FIREARM

If you find that ADAM MATOS committed Manslaughter and you also find beyond a reasonable doubt that during the commission of the crime, he personally carried, displayed, used, threatened to use, or attempted to use a firearm, you should find him guilty of Manslaughter with a firearm.

A "firearm" is legally defined as any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun.

If you find that ADAM MATOS committed Manslaughter but you are not convinced beyond a reasonable doubt that he personally carried, displayed, used, threatened to use, or attempted to use a firearm, then you should find him guilty only of Manslaughter.

LESSER INCLUDED MURDER IN THE SECOND DEGREE (COUNT 3)

To prove the crime of Murder in the Second Degree, the State must prove the following three elements beyond a reasonable doubt:

1. Gregory Brown is dead.
2. The death was caused by the criminal act of ADAM MATOS.
3. There was an unlawful killing of Gregory Brown by an act imminently dangerous to another and demonstrating a depraved mind without regard for human life.

An "act" includes a series of related actions arising from and performed pursuant to a single design or purpose.

An act is "imminently dangerous to another and demonstrating a depraved mind" if it is an act or series of acts that:

1. a person of ordinary judgment would know is reasonably certain to kill or do serious bodily injury to another, and
2. is done from ill will, hatred, spite, or an evil intent, and
3. is of such a nature that the act itself indicates an indifference to human life.

In order to convict of Murder in the Second Degree, it is not necessary for the State to prove the defendant had an intent to cause death.

An issue in this case is whether ADAM MATOS did not have a depraved mind without regard for human life because he acted in the heat of passion based on adequate provocation. In order to find that the defendant did not have a depraved mind without regard for human life because he acted in the heat of passion based on adequate provocation:

- a. there must have been a sudden event that would have suspended the exercise of judgment in an ordinary reasonable person; and
- b. a reasonable person would have lost normal self-control and would have been driven by a blind and unreasoning fury; and
- c. there was not a reasonable amount of time for a reasonable person to cool off; and
- d. a reasonable person would not have cooled off before committing the act that caused death; and
- e. ADAM MATOS was, in fact, so provoked and did not cool off before he committed the act that caused the death of Gregory Brown.

If you have a reasonable doubt about whether the defendant had a depraved mind without regard for human life because he acted in the heat of passion based on adequate provocation, you should not find him guilty of Murder in the Second Degree.

POSSESSION OF A FIREARM AND DISCHARGE CAUSING DEATH

If you find that ADAM MATOS committed Murder in the Second Degree and you also find beyond a reasonable doubt that during the commission of the crime, he personally carried, displayed, used, threatened to use, or attempted to use a firearm, you should find him guilty of Murder in the Second Degree with a firearm.

If you find that ADAM MATOS committed Murder in the Second Degree but you are not convinced beyond a reasonable doubt that he personally carried,

displayed, used, threatened to use, or attempted to use, a firearm, then you should find him guilty only of Murder in the Second Degree.

If you find that ADAM MATOS committed Murder in the Second Degree and you also find beyond a reasonable doubt that during the commission of the crime, he possessed and discharged a firearm, and in doing so, caused the death of Gregory Brown, you should find the defendant guilty of Murder in the Second Degree with possession and discharge of a firearm causing death.

A "firearm" is legally defined as any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun.

To "actually possess" a firearm means that the defendant

- a. carried a firearm on his person.

or

- b. had a firearm within immediate physical reach with ready access with the intent to use the firearm during the commission of the crime.

LESSER INCLUDED MANSLAUGHTER (COUNT 3)

To prove the crime of Manslaughter, the State must prove the following two elements beyond a reasonable doubt:

1. Gregory Brown is dead.
2. ADAM MATOS intentionally committed an act or acts that caused the death of Gregory Brown.

The defendant cannot be guilty of manslaughter by committing a merely negligent act or if the killing was either justifiable or excusable homicide, as I have previously instructed you on page 2 (Introduction to Homicide).

Each of us has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence.

In order to convict of manslaughter by act, it is not necessary for the State to prove that the defendant had an intent to cause death, only an intent to commit an act that was not merely negligent, justified, or excusable and which caused death.

POSSESSION OF A FIREARM

If you find that ADAM MATOS committed Manslaughter and you also find beyond a reasonable doubt that during the commission of the crime, he personally carried, displayed, used, threatened to use, or attempted to use a firearm, you should find him guilty of Manslaughter with a firearm.

A "firearm" is legally defined as any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun.

If you find that ADAM MATOS committed Manslaughter but you are not convinced beyond a reasonable doubt that he personally carried, displayed, used, threatened to use, or attempted to use a firearm, then you should find him guilty only of Manslaughter.

LESSER INCLUDED MURDER IN THE SECOND DEGREE (COUNT 4)

To prove the crime of Murder in the Second Degree, the State must prove the following three elements beyond a reasonable doubt:

1. Margaret Brown is dead.
2. The death was caused by the criminal act of ADAM MATOS.
3. There was an unlawful killing of Margaret Brown by an act imminently dangerous to another and demonstrating a depraved mind without regard for human life.

An "act" includes a series of related actions arising from and performed pursuant to a single design or purpose.

An act is "imminently dangerous to another and demonstrating a depraved mind" if it is an act or series of acts that:

1. a person of ordinary judgment would know is reasonably certain to kill or do serious bodily injury to another, and
2. is done from ill will, hatred, spite, or an evil intent, and
3. is of such a nature that the act itself indicates an indifference to human life.

In order to convict of Murder in the Second Degree, it is not necessary for the State to prove the defendant had an intent to cause death.

An issue in this case is whether ADAM MATOS did not have a depraved mind without regard for human life because he acted in the heat of passion based on adequate provocation. In order to find that the defendant did not have a depraved mind without regard for human life because he acted in the heat of passion based on adequate provocation:

- a. there must have been a sudden event that would have suspended the exercise of judgment in an ordinary reasonable person; and

- b. a reasonable person would have lost normal self-control and would have been driven by a blind and unreasoning fury; and
- c. there was not a reasonable amount of time for a reasonable person to cool off; and
- d. a reasonable person would not have cooled off before committing the act that caused death; and
- e. ADAM MATOS was, in fact, so provoked and did not cool off before he committed the act that caused the death of Margaret Brown.

If you have a reasonable doubt about whether the defendant had a depraved mind without regard for human life because he acted in the heat of passion based on adequate provocation, you should not find him guilty of Murder in the Second Degree.

LESSER INCLUDED MANSLAUGHTER (COUNT 4)

To prove the crime of Manslaughter, the State must prove the following two elements beyond a reasonable doubt:

1. Margaret Brown is dead.
2. ADAM MATOS intentionally committed an act or acts that caused the death of Margaret Brown.

The defendant cannot be guilty of manslaughter by committing a merely negligent act or if the killing was either justifiable or excusable homicide, as I have previously instructed you on page 2 (Introduction to Homicide).

Each of us has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence.

In order to convict of manslaughter by act, it is not necessary for the State to prove that the defendant had an intent to cause death, only an intent to commit an act that was not merely negligent, justified, or excusable and which caused death.

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 indictment 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.

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's 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's testimony?
8. Did the witness at some other time make a statement that is inconsistent with the testimony he gave in court?
9. Has the witness been convicted of a felony or misdemeanor involving dishonesty or false statement?
10. Does the witness have a general reputation for dishonesty or truthfulness?

Whether the State has met its burden of proof does not depend upon the number of witnesses it has called or upon the number of exhibits it has offered, but instead upon the nature and quality of the evidence presented.

The fact that a witness is employed in law enforcement does not mean that his or her testimony deserves more or less consideration than that of any other witness.

Expert witnesses are like other witnesses, with one exception—the law permits an expert witness to give his or her opinion. However, an expert's opinion is reliable only when given on a subject about which you believe him or her to be an expert. Like other witnesses, you may believe or disbelieve all or any part of an expert's testimony.

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.

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.

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

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.

EYEWITNESS IDENTIFICATION

You have heard testimony of eyewitness identification. In deciding how much weight to give to this testimony, you may consider the various factors mentioned in these instructions concerning credibility of witnesses.

In addition to those factors, in evaluating eyewitness identification testimony, you may also consider:

1. The capacity and opportunity of the eyewitness to observe the offender based upon the length of time for observation and the conditions at the time of observation, including lighting and distance.
2. Whether the identification was the product of the eyewitness's own recollection or was the result of influence or suggestiveness.
3. The circumstances under which the defendant was presented to the eyewitness for identification.
4. Any inconsistent identifications made by the eyewitness.
5. Any instance in which the eyewitness did not make an identification when given the opportunity to do so.
6. The witness's familiarity with the subject identified.
7. Lapses of time between the event and the identifications.
8. Whether the eyewitness and the offender are of different races or ethnic groups, and whether this may have affected the accuracy of the identification.
9. The totality of circumstances surrounding the eyewitness's identification.

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.
6. Whatever verdict you render must be unanimous, that is, each juror must agree to the same verdict.
7. 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.

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.

VERDICT

You may find the defendant guilty as charged in the indictment or guilty of such lesser included crimes 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.

The verdict must be unanimous, that is, all of you must agree to the same verdict. Only one verdict may be returned as to each crime charged. The verdict must be in writing and for your convenience the necessary verdict forms have been prepared for you. They are as follows:

SINGLE DEFENDANT, MULTIPLE COUNTS

A separate crime is charged in each count of the indictment 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.

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 choose a foreperson who will preside over your deliberations. The foreperson should see to it that your discussions are carried on in an organized way and that everyone has a fair chance to be heard. It is also the foreperson's job to sign and date the verdict form when all of you have agreed on a verdict and to bring the verdict form back to the courtroom when you return.

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.

Many of you may have cell phones, tablets, laptops, or other electronic devices here in the courtroom. The rules do not allow you to bring your phones or any of those types of electronic devices into the jury room. Kindly leave those devices on your seats where they will be guarded by the bailiff while you deliberate.

If you need to communicate with me, send a note through the bailiff, signed by the foreperson. If you have voted, do not disclose the actual vote in the note.

If you have questions, I will talk with the attorneys before I answer, so it may take some time. You may continue your deliberations while you wait for my answer. I will answer any questions, if I can, in writing or orally here in open court.

During the trial, items were received into evidence as exhibits. You may examine whatever exhibits you think will help you in your deliberations. These exhibits will be sent into the jury room with you when you begin to deliberate.

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.