

STATE OF INDIANA)
) SS:
COUNTY OF STEUBEN)

IN THE STEUBEN CIRCUIT COURT
CAUSE NO. 76C01-0710-CM-600

STATE OF INDIANA)
)
VS)
)
PATRICIA L. MARTIN)

FINAL INSTRUCTIONS

At the close of the evidence and before the arguments of counsel, the Court now indicates that it will give and read to the jury at the trial of this cause the Court's Final Instructions No. 1 through 19, both inclusive, exclusive of captions in parentheses, pursuant to Ind. Criminal Rule 8(F).

Dated: 10-23-08

Allen N. Wheat
Allen N. Wheat, Judge
Steuben Circuit Court

COURT'S FINAL INSTRUCTION NO. 1

(LAW - FACT - DETERMINATION)

It is the duty of the Court to instruct you in writing at this time concerning the matters of law which are necessary for your information in arriving at your verdict.

In discharging this duty the Court has no right to assume, and does not assume, that any fact or facts will be established or not established, it being your exclusive right and duty under the Constitution of the State of Indiana to determine from all of the evidence what has and what has not been proven.

The Constitution of the State of Indiana makes you the judges of both the law and the facts. Although this means you are to determine the law for yourself it does not mean that you have the right to make, repeal, disregard, or ignore the law as it exists. The instructions you receive from the Court are the best source as to the law applicable in this case.

COURT'S FINAL INSTRUCTION NO. 2

(INFORMATION - ISSUES FOR TRIAL)

In this case Patricia L. Martin has been charged with having committed the offense of Count I - Operating a Motor Vehicle While Intoxicated / Endangering a Person, a Class A Misdemeanor. The criminal charge, omitting the formal parts, reads as follows:

Count I

"The undersigned affirms that on or about the 26th day of October of the year 2007, at and in County of Steuben, State of Indiana, one Patricia L. Martin, did operate a certain motor vehicle, to-wit: 2005 Black Cadillac STS bearing 2007, Indiana license plate number 922DDP on C.R. 100 N at Landis Road in Steuben County, Indiana while she, the said Patricia L. Martin, was intoxicated in such a manner that endangers a person, all of which is contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Indiana."

**(STATUTE - ESSENTIAL ELEMENTS -
OPERATING A MOTOR VEHICLE WHILE INTOXICATED / ENDANGERING A PERSON)**

The crime of Operating a Motor Vehicle While Intoxicated / Endangering a Person as charged in this case is defined by statute as follows:

"(a) Except as provided in subsection (b), a person who operates a vehicle while intoxicated commits a Class C Misdemeanor.

(b) An offense described in subsection (a) is a Class A Misdemeanor if the person operates a vehicle in a manner that endangers a person."

The material and essential elements which the State must prove beyond a reasonable doubt to convict the Defendant of the offense of Operating a Motor Vehicle While Intoxicated / Endangering a Person, a Class A Misdemeanor, are that Mrs. Martin:

1. Operated a vehicle in Steuben County;
2. While intoxicated; and,
3. The vehicle was being operated by Mrs. Martin in a manner that endangered any person which would include Mrs. Martin.

If the State failed to prove each of these elements beyond a reasonable doubt, you must find Mrs. Martin not guilty.

If the State did prove each of these elements beyond a reasonable doubt, you may find Mrs. Martin guilty of the crime with which she has been charged.

COURT'S FINAL INSTRUCTION NO. 4

(INTOXICATED DEFINED)

Intoxicated means under the influence of alcohol, a controlled substance, any drug other than alcohol or a controlled substance, or any combination of alcohol, controlled substances, or drugs, such that there is an impaired condition of thought and action and the loss of normal control of a person's faculties to such an extent as to endanger any person including the general public, law enforcement officers, Mrs. Martin, or passenger(s) in the vehicle she was operating.

COURT'S FINAL INSTRUCTION NO. 5

(OPERATE DEFINED)

A person operates a motor vehicle if the person either drives the vehicle or is in actual physical control of the vehicle upon a highway.

COURT'S FINAL INSTRUCTION NO. 6

(MOTOR VEHICLE DEFINED)

The term "motor vehicle" means any vehicle that is self-propelled except for a farm tractor, or implement of husbandry.

COURT'S FINAL INSTRUCTION NO. 7

(CHEMICAL TEST DEFINED)

Chemical test means an analysis of a person's blood, breath, urine, or other bodily substance for the determination of the presence of alcohol, a controlled substance, or a drug.

COURT'S FINAL INSTRUCTION NO. 8

(TIME OF TEST)

If you find:

- (1) a chemical test was performed on a test sample taken from the Defendant; and
- (2) the chemical test was performed within three (3) hours of the Defendant's alleged operation of a motor vehicle; and
- (3) at the time the test was administered the test results indicated that the Defendant had an alcohol concentration equivalent of at least .08% by weight in grams per 210 liters of the Defendant's breath;

then, you may infer that the Defendant had the same alcohol concentration equivalent at the time the Defendant is alleged to have operated the motor vehicle.

This inference is not conclusive. You are free to accept or reject the inference based upon your analysis of all of the evidence which has been presented to you.

COURT'S FINAL INSTRUCTION NO. 9

(RELEVANT EVIDENCE - NOT CONCLUSIVE)

If a person operates a motor vehicle with an alcohol concentration equivalent of at least .08% by weight in grams per 210 liters of the person's breath, this is relevant evidence that the person operated a motor vehicle while intoxicated as that term has been defined for you. This evidence, however, without additional evidence of impairment, would be insufficient to support a guilty verdict against Mrs. Martin for having committed the crime of Operating a Motor Vehicle While Intoxicated / Endangering a Person, as charged in this case.

COURT'S FINAL INSTRUCTION NO. 10

(REASONABLE DOUBT)

The state has the burden of proving the Defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases, where you were told that it is only necessary to prove that a fact is more likely true than not true. In criminal cases the state's proof must be more powerful than that. It must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the Defendant is guilty of the crime with which she has been charged, you may find Mrs. Martin guilty. If on the other hand, you think there is a real possibility that the Defendant is not guilty, you must give Mrs. Martin the benefit of the doubt and find the Defendant not guilty.

COURT'S FINAL INSTRUCTION NO. 11

(DIRECT EVIDENCE - CIRCUMSTANTIAL EVIDENCE)

Direct evidence means evidence that directly proves a fact, without an inference, and which itself, if true, conclusively establishes that fact.

Circumstantial evidence means evidence that proves a fact from which an inference of the existence of another fact may be drawn.

It is not necessary that facts be proved by direct evidence. Both direct evidence and circumstantial evidence are acceptable as a means of proof. Neither is entitled to any greater weight than the other.

COURT'S FINAL INSTRUCTION NO. 12

(CREDIBILITY OF WITNESSES - WEIGHING EVIDENCE)

You are the exclusive judges of the evidence, the credibility of the witnesses, and the weight to be given to the testimony of each of them. In considering the testimony of any witness, you may take into account his or her ability and opportunity to observe; the manner and conduct of the witness while testifying; any interest, bias or prejudice the witness may have; any relationship with other witnesses or interested parties; and, the reasonableness of the testimony of the witness considered in the light of all of the evidence in the case.

You should attempt to fit the evidence to the presumption that Mrs. Martin is innocent and that every witness is telling the truth, if it can reasonably be done. You should not disregard the testimony of any witness without a reason and without careful consideration. If you find conflicting testimony that you cannot reconcile you must determine which of the witnesses you believe and which of them you disbelieve.

In weighing the testimony to determine what or whom you believe, you should use your own knowledge, experience, and common sense gained from day-to-day living. The number of witnesses who testify to a particular point need not control your determination of the truth. You should give the greatest weight to the evidence that convinces you most strongly of its truthfulness.

COURT'S FINAL INSTRUCTION NO. 13

(ARGUMENT OF COUNSEL)

You are instructed that the argument of counsel is for the purpose of aiding you to reach a proper verdict by refreshing in your mind the evidence which has been given to you in this case and by showing the application of the law thereto; but, whatever will be argued, you will bear in mind that it is your duty to be governed in your deliberations by the evidence as you understand it and remember it to be, and by the law as you determine it to be, and you should disregard entirely any remarks by counsel not warranted by the evidence.

COURT'S FINAL INSTRUCTION NO. 14

(INSTRUCTIONS TO BE CONSIDERED AS A WHOLE)

It is not practical and the Court has not attempted to embody all matters of law applicable to this case in any one instruction. You are to consider all of the instructions as a whole, and in considering any one instruction, you should construe it in connection with, and in light of, every other instruction given. Do not single out any certain sentence or any individual point or instruction and ignore the others.

COURT'S FINAL INSTRUCTION NO. 15

(PENALTY IMPOSED BY COURT)

These instructions do not contain any information concerning the penalties that could be imposed upon a conviction. I am solely responsible for assessing the penalty within a broad range of possibilities. The law has been so written that you may make your decisions without being influenced by the apparent severity or leniency of the sentence.

COURT'S FINAL INSTRUCTION NO. 16

(FORMS OF VERDICT)

The Court is submitting to you verdict forms in blank for your convenience. Your verdict must be unanimous.

COURT'S FINAL INSTRUCTION NO. 17

(JURY DELIBERATION - I)

In order to return a verdict of guilty or not guilty you must all agree on the verdict.

Each juror must be satisfied beyond a reasonable doubt of Mrs. Martin's guilt before he or she consents to a verdict of guilty, and if any one of you, after having heard the evidence, the argument of counsel, and the instructions of the Court, and having consulted with your fellow jurors, entertains a reasonable doubt regarding guilt no verdict can be reached against the Defendant.

Each juror must feel the responsibility resting upon him or her as a member of the jury and should realize that his or her mind should be convinced by the evidence of Mrs. Martin's guilt beyond a reasonable doubt before he or she consents to a verdict of guilty regardless of the fact that other jurors may be of another opinion regarding the guilt of Mrs. Martin.

During your deliberations you should not yield your individual judgment to your fellow jurors just so you can return a verdict. However, it is your duty to impartially consider the evidence with your fellow jurors, to examine your own view in light of the discussion, and to consult and reason with your fellow jurors in a good faith effort to reach a just verdict.

After you return a verdict you are under no obligation to discuss the reasons for it with anyone.

COURT'S FINAL INSTRUCTION NO. 18

(JURY DELIBERATION - II)

It is necessary that the regular panel of jurors remain together until you are discharged by the Court, and you will be in the charge of the court Bailiff detailed for that purpose. You must not communicate on any subject whatsoever with any person other than members of this jury except to answer such questions as may be asked you by the Bailiff upon the direction of the Court. If at any time you have the desire to communicate with the Court you may notify the Bailiff to that effect and she will communicate with me.

You have been furnished by the Court with an exact copy of all of the preliminary and final instructions given by the Court. These instructions should be returned to the Court with your verdict.

When you return to the jury room you will first select one of your number as your foreperson. The foreperson will preside over your deliberations. When you have agreed upon your verdict you will reduce it to writing and cause the foreperson to sign and date the verdict form. When your verdict has been agreed upon, signed and dated, you will notify the Bailiff and the Bailiff will return you into open Court.

COURT'S FINAL INSTRUCTION NO. 19

(ALTERNATE JUROR)

Linda Driver, you have been selected as the alternate juror in this cause. The duties you have assumed as alternate juror are the same as those of the regular jurors. You will be allowed to retire with the jury to the jury room, and you should listen attentively to the deliberations of the jury.

You should not, however, participate in any manner in the discussions, deliberations or voting of the jury. You should listen silently and without comment to the deliberations. You may only participate in the deliberations if and when the Court excuses a regular juror and you are then directed by the Court to actively serve.

The foreperson of the jury shall prevent any discussion or voting by the alternate juror, and shall promptly report to the Court any violation of this instruction.