

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    )

**PRELIMINARY INSTRUCTIONS**

The jury having been duly and legally impaneled and sworn, and before the opening statements of counsel, the Court now indicates that it will give and read to the jury the Court's Preliminary Instructions No. 1 through 11, both inclusive, attached hereto, 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 PRELIMINARY INSTRUCTION NO. 1

(DUTY OF JURORS - ADMONISHMENT)

You have been selected as jurors and have taken an oath to well and truly try this case.

During the progress of the trial there will be periods of time during which you will be allowed to leave the courtroom for lunch periods and overnight. During these periods of time that you are outside the courtroom you must not talk about this case among yourselves or with anyone else. You are, however, permitted during recesses when you are all together to discuss the evidence you have heard thus far in the case. You should reach no final decision in this case until you have heard all of the evidence, the arguments of counsel, and the final instructions as to the law which will be given to you later by the Court.

This trial may generate publicity in the media. You must not read or listen to these accounts, but should confine your attention to the court proceedings listening attentively to the evidence as it comes from the witnesses, and reach a verdict based solely upon what you hear and see in this courtroom.

If any of you realize during the course of this trial that you have personal knowledge of any fact material to this case you shall inform the Bailiff that you believe you have this knowledge at the first available opportunity.

COURT'S PRELIMINARY INSTRUCTION NO. 2

(LAW - FACT)

Since this is a criminal case the Constitution of the State of Indiana makes you the judges of both the law and the facts. Though this means that 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 PRELIMINARY INSTRUCTION NO. 3

**(INFORMATION NOT EVIDENCE)**

The Defendant has entered a plea of not guilty and the burden rests upon the State to prove to each of you by proof beyond a reasonable doubt every essential element of each crime charged.

The charge which has been filed is the formal method of bringing the Defendant to trial. The fact that a charge has been filed against the Defendant is not to be considered by you as any evidence of guilt.

COURT'S PRELIMINARY INSTRUCTION NO. 4

(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.

COURT'S PRELIMINARY INSTRUCTION NO. 6

**(PRESUMPTION OF INNOCENCE - BURDEN OF PROOF)**

A person charged with a crime is presumed to be innocent. To overcome the presumption of innocence in this case the State must prove Mrs. Martin guilty of each essential element of the crime with which she has been charged by proof beyond a reasonable doubt.

COURT'S PRELIMINARY INSTRUCTION NO. 7

**(REASONABLE DOUBT)**

As you have been previously instructed 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 PRELIMINARY INSTRUCTION NO. 8

**(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 PRELIMINARY INSTRUCTION NO. 9

**(NOTE TAKING)**

During the progress of the trial you may take notes if you wish. However, it is difficult to take detailed notes and at the same time pay careful attention to what the witnesses are saying. If you do take notes do not allow your note-taking to interfere with your attention to the testimony. Do not take notes with you at the end of the day; instead, leave the notes in the jury room.

COURT'S PRELIMINARY INSTRUCTION NO. 10

(CONDUCT OF TRIAL)

The trial of this case will proceed as follows:

First, the attorneys will have an opportunity to make opening statements. These statements are not evidence and should be considered only as a preview of what the attorneys expect the evidence will be.

Following opening statements witnesses will be called to testify. They will be placed under oath and questioned by the attorneys. Documents and other tangible exhibits may also be admitted into evidence. If an exhibit is given to you to examine you should examine it carefully, individually, and without any comment.

When the attorneys have concluded presenting evidence, and before you retire to consider your verdict, I will give you further instructions on the law which applies to this case.

Thereafter, the attorneys will make closing arguments. The closing arguments are not evidence. The attorneys are permitted to argue, to characterize the evidence, and to attempt to persuade you to a particular verdict. You may accept or reject these arguments as you see fit.

COURT'S PRELIMINARY INSTRUCTION NO. 11

(JURY QUESTIONS)

Each of you have the right to ask questions of a witness when the attorneys have completed their questioning of the witness.

For you to have a question to ask of a witness you must put the question in writing before the witness is excused by the Court. The Bailiff will then pick up your questions and present them to me. I will then review your questions with the attorneys. I will then decide whether to read your question to the witness.

If I do not read your question to the witness please do not assume that I thought your question was not a good question. Your question must be judged by the same evidentiary standards by which questions put to a witness by the attorneys are judged. Therefore, even if your question had been asked by an attorney, I would not have allowed the witness to have answered it.