

JURY CHARGE

THE COURT: 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.

THE DEFENDANT, SCOTTY MERSON, THE DEFENDANT IN THIS CASE HAS BEEN ACCUSED OF THE CRIMES OF SEXUAL BATTERY AND THE SEPARATE CRIME OF BURGLARY TO A DWELLING WITH A BATTERY THEREIN.

THE STATE OF FLORIDA ALLEGING IN COUNT ONE THROUGH LAWSON LAMAR, STATE ATTORNEY OF THE NINTH JUDICIAL CIRCUIT PROSECUTING FOR THE STATE OF FLORIDA IN ORANGE COUNTY, OR LAWSON LAMAR, STATE ATTORNEY OF THE NINTH JUDICIAL CIRCUIT PROSECUTING FOR THE STATE OF FLORIDA IN ORANGE COUNTY, BY AND THROUGH THE UNDERSIGNED DESIGNATED ASSISTANT STATE ATTORNEY, UNDER OATH, CHARGES THAT SCOTTY MERSON, A PERSON 18 YEARS OF AGE OR OLDER, ON OR ABOUT THE 17TH DAY OF MAY, 1990, IN SAID COUNTY AND STATE, DID IN VIOLATION OF FLORIDA STATUTE 794.011 SUBSECTION TWO, COMMIT A SEXUAL BATTERY UPON ANGELA [REDACTED], A PERSON LESS THAN 12 YEARS OF AGE, AND IN FURTHERANCE THEREOF DID PERFORM CUNNILINGUS UPON ANGELA [REDACTED].

BEFORE YOU CAN FIND THE DEFENDANT GUILTY OF SEXUAL BATTERY UPON A PERSON LESS THAN 12 YEARS OF AGE, THE STATE MUST PROVE THE FOLLOWING TWO ELEMENTS BEYOND

1 A REASONABLE DOUBT:

2 ONE, THAT THE VICTIM ANGELA [REDACTED], WAS LESS
3 THAN 12 YEARS OF AGE.

4 AND, TWO, THAT THE DEFENDANT, SCOTTY MERSON,
5 COMMITTED AN ACT UPON THE VICTIM ANGELA [REDACTED] IN WHICH
6 THE SEXUAL ORGAN OF ANGELA [REDACTED] HAD UNION WITH THE
7 MOUTH OF THE DEFENDANT, SCOTTY MERSON.

8 THE PUNISHMENT PROVIDED BY LAW FOR SEXUAL
9 BATTERY UPON A PERSON LESS THAN 12 YEARS OF AGE IS
10 GREATER DEPENDING UPON THE AGE OF THE DEFENDANT.

11 THEREFORE, IF YOU FIND THE DEFENDANT GUILTY
12 OF SEXUAL BATTERY UPON A PERSON LESS THAN 12 YEARS OF
13 AGE AND YOU FURTHER FIND THAT AT THE TIME OF THE SEXUAL
14 BATTERY THE DEFENDANT WAS 18 YEARS OF AGE OR OLDER, YOU
15 SHOULD FIND HIM GUILTY OF SEXUAL BATTERY UPON A PERSON
16 LESS THAN 12 YEARS OF AGE BY A PERSON 18 YEARS OF AGE
17 OR OLDER.

18 IF YOU FIND THAT THE DEFENDANT WAS NOT 18
19 YEARS OF AGE OR OLDER BUT DID COMMIT THE SEXUAL BATTERY,
20 YOU SHOULD FIND HIM GUILTY ONLY OF SEXUAL BATTERY UPON
21 A PERSON LESS THAN 12 YEARS OF AGE BY A PERSON UNDER
22 18 YEARS OF AGE.

23 "UNION" IS AN ALTERNATIVE TO PENETRATION
24 AND MEANS COMING IN CONTACT, OR COMING INTO CONTACT.

25 IN CONSIDERING THE EVIDENCE, YOU SHOULD

1 CONSIDER THE POSSIBILITY THAT ALTHOUGH THE EVIDENCE
2 MAY NOT CONVINCE YOU THAT THE DEFENDANT COMMITTED THE
3 MAIN CRIME OF WHICH HE IS A ACCUSED, THERE MAY BE
4 EVIDENCE THAT HE COMMITTED OTHER ACTS THAT WOULD
5 CONSTITUTE A LESSER INCLUDED CRIME.

6 THEREFORE, IF YOU DECIDE THAT THE MAIN
7 ACCUSATION HAS NOT BEEN PROVED BEYOND A REASONABLE
8 DOUBT, YOU WILL NEXT NEED TO DECIDE IF THE DEFENDANT
9 IS GUILTY OF ANY LESSER INCLUDED CRIME.

10 THE LESSER CRIME INDICATED IN THE DEFINITION
11 OF SEXUAL BATTERY IS THE CRIME OF BATTERY.

12 BEFORE YOU CAN FIND THE DEFENDANT GUILTY
13 OF BATTERY, THE STATE MUST PROVE THE FOLLOWING ELEMENT
14 BEYOND A REASONABLE DOUBT:

15 THAT THE DEFENDANT INTENTIONALLY TOUCHED
16 THE VICTIM AGAINST HER WILL.

17 COUNT TWO OF THE INFORMATION CHARGES THE
18 CRIME OF BURGLARY OF A DWELLING WITH A BATTERY THEREIN.
19 LAWSON LAWMAR, STATE ATTORNEY OF THE NINTH JUDICIAL
20 CIRCUIT PROSECUTING FOR THE STATE OF FLORIDA IN ORANGE
21 COUNTY, OR LAWSON LAWMAR, STATE ATTORNEY OF THE NINTH
22 JUDICIAL CIRCUIT PROSECUTING FOR THE STATE OF FLORIDA
23 IN ORANGE COUNTY, BY AND THROUGH THE UNDERSIGNED
24 DESIGNATED ASSISTANT STATE ATTORNEY, UNDER OATH,
25 CHARGES THAT SCOTTY MERSON, ON OR ABOUT THE 17TH DAY

1 OF MAY, 1990, IN SAID COUNTY AND STATE, DID IN VIOLATION
2 OF FLORIDA STATUTE 810.02 SUBSECTION (2), DID ENTER
3 OR REMAIN IN A CERTAIN STRUCTURE; TO-WIT: A DWELLING
4 LOCATED IN THE VICINITY OF 3020 HARRISON AVENUE, IN
5 THE COUNTY AND STATE AFORESAID, THE PROPERTY OF CATHY
6 [REDACTED] AS OWNER OR CUSTODIAN THEREOF, WITH THE INTENT
7 TO COMMIT AN OFFENSE THEREIN, AT A TIME WHEN THE SAID
8 PREMISES WERE NOT OPEN TO THE PUBLIC NOR WAS THE SAID
9 SCOTTY MERSON LICENSED OR INVITED TO ENTER OR REMAIN,
10 AND DURING THE COURSE OF COMMITTING SAID OFFENSE,
11 SCOTTY MERSON DID COMMIT A BATTERY UPON MICHELLE [REDACTED]
12 BY INTENTIONALLY TOUCHING OR STRIKING THE SAID MICHELLE
13 [REDACTED] AGAINST HER WILL, OR BY INTENTIONALLY CAUSING
14 BODILY HARM TO MICHELLE COLE.

15 BEFORE YOU CAN FIND THE DEFENDANT GUILTY
16 OF BURGLARY, THE STATE MUST PROVE THE FOLLOWING THREE
17 ELEMENTS BEYOND A REASONABLE DOUBT:

18 ONE, THE DEFENDANT SCOTTY MERSON, ENTERED
19 OR REMAINED IN A STRUCTURE OWNED BY OR IN THE POSSESSION
20 OF CATHY [REDACTED].

21 THAT, THE NUMBER TWO, THAT THE DEFENDANT
22 DID NOT HAVE THE PERMISSION OR CONSENT OF CATHY [REDACTED]
23 OR ANYONE AUTHORIZED TO ACT FOR HER TO ENTER OR REMAIN
24 IN THE STRUCTURE AT THE TIME.

25 AND THREE, AT THE TIME OF ENTERING OR

1 REMAINING IN THE STRUCTURE THE DEFENDANT HAD A
2 FULLY-FORMED, CONSCIOUS INTENT TO COMMIT THE CRIME
3 OF BATTERY IN THAT STRUCTURE.

4 THE CRIME OF BATTERY IS DEFINED AS FOLLOWS:

5 BEFORE YOU CAN FIND THE DEFENDANT GUILTY
6 OF BATTERY, THE STATE MUST PROVE THE FOLLOWING ELEMENT
7 BEYOND A REASONABLE DOUBT:

8 THAT THE DEFENDANT INTENTIONALLY TOUCHED
9 THE VICTIM AGAINST HER WILL.

10 PROOF OF THE ENTERING OF A STRUCTURE
11 STEALTHILY AND WITHOUT THE CONSENT OF THE OWNER OR
12 OCCUPANTS MAY JUSTIFY A FINDING THAT THE ENTERING WAS
13 WITH THE INTENT TO COMMIT A CRIME, IF FROM ALL THE
14 SURROUNDING FACTS AND CIRCUMSTANCES YOU ARE CONVINCED
15 BEYOND A REASONABLE DOUBT THAT THE INTENT EXISTED.

16 THE INTENT WITH WHICH AN ACT IS DONE IS
17 AN OPERATION OF THE MIND AND, THEREFORE, IS NOT ALWAYS
18 CAPABLE OF DIRECT AND POSITIVE PROOF. IT MAY BE
19 ESTABLISHED BY CIRCUMSTANTIAL EVIDENCE, LIKE ANY
20 OTHER FACT IN A CASE.

21 EVEN THOUGH AN UNLAWFUL ENTERING IN A
22 STRUCTURE IS PROVED, IF THE EVIDENCE DOES NOT ESTABLISH
23 THAT IT WAS DONE WITH THE INTENT TO COMMIT THE CRIME
24 OF BATTERY, THE DEFENDANT MUST BE FOUND NOT GUILTY.

25 "STRUCTURE" MEANS ANY BUILDING OF ANY KIND,

1 EITHER TEMPORARY OR PERMANENT, THAT HAS A ROOF OVER
2 IT AND THE ENCLOSED SPACE OF GROUND AND OUTBUILDINGS
3 IMMEDIATELY SURROUNDING THAT STRUCTURE.

4 THE PUNISHMENT PROVIDED BY LAW FOR THE CRIME
5 OF BURGLARY IS GREATER IF THE BURGLARY WAS COMMITTED
6 UNDER CERTAIN AGGRAVATING CIRCUMSTANCES.

7 THEREFORE, IF YOU FIND THE DEFENDANT GUILTY
8 OF BURGLARY, YOU MUST THEN CONSIDER WHETHER THE STATE
9 HAS PROVED, HAS FURTHER PROVED THOSE CIRCUMSTANCES.

10 IF YOU FIND THAT IN THE COURSE OF COMMITTING
11 THE BURGLARY THE DEFENDANT MADE A BATTERY OR COMMITTED
12 A BATTERY UPON ANY PERSON, YOU SHOULD FIND HIM GUILTY
13 OF BURGLARY DURING WHICH A BATTERY HAS BEEN COMMITTED.

14 IF YOU FIND THAT WHILE THE DEFENDANT MADE
15 NO ASSAULT OR BATTERY AND WAS UNARMED, THE STRUCTURE
16 ENTERED WAS A DWELLING, YOU SHOULD FIND HIM GUILTY OF
17 BURGLARY TO A DWELLING.

18 IF YOU FIND THE DEFENDANT COMMITTED THE
19 BURGLARY WITHOUT ANY AGGRAVATING CIRCUMSTANCES, YOU
20 SHOULD FIND HIM GUILTY ONLY OF BURGLARY.

21 AN ACT IS COMMITTED IN THE COURSE OF
22 COMMITTING IF IT OCCURS IN THE ATTEMPT TO COMMIT THE
23 OFFENSE, OR IN FLIGHT AFTER THE ATTEMPT OR COMMISSION.

24 A "DWELLING" IS A HOUSE OF ANY KIND OR A
25 HOUSE TRAILER SET IN A FOUNDATION, OR ANY APARTMENT,

1 OR ROOM ACTUALLY USED AS A DWELLING HOME, PLACE OF
2 ABODE, PERMANENTLY OR TEMPORARILY.

3 THEREFORE, IF YOU FIND THE DEFENDANT GUILTY
4 OF A BURGLARY TO A DWELLING, IT WILL BE NECESSARY FOR
5 YOU TO STATE IN YOUR VERDICT WHETHER THE DEFENDANT
6 COMMITTED THE CRIME OF BATTERY THEREIN.

7 IN CONSIDERING THE EVIDENCE YOU SHOULD
8 CONSIDER THE POSSIBILITY THAT ALTHOUGH THE EVIDENCE MAY
9 NOT CONVINCE YOU THAT THE DEFENDANT COMMITTED THE MAIN
10 CRIME HERE, BURGLARY TO A DWELLING WITH BATTERY THEREIN,
11 OF WHICH HE HE IS ACCUSED, THERE MAY BE EVIDENCE THAT
12 HE COMMITTED OTHER ACTS THAT WOULD CONSTITUTE A LESSER
13 INCLUDED CRIME.

14 THEREFORE, IF YOU DECIDE THAT THE MAIN
15 ACCUSATION HAS NOT BEEN PROVED BEYOND A REASONABLE DOUBT,
16 YOU WILL NEXT NEED TO DECIDE IF THE DEFENDANT IS GUILTY
17 OF ANY LESSER INCLUDED CRIME.

18 THE LESSER CRIME INDICATED IN THE DEFINITION
19 OF BURGLARY TO A DWELLING WITH A BATTERY THEREIN IS THE
20 LESSER CRIME OF BURGLARY TO A DWELLING.

21 AN ISSUE IN THIS CASE IS WHETHER THE
22 DEFENDANT WAS PRESENT WHEN THE CRIME ALLEGEDLY WAS
23 COMMITTED. IF YOU HAVE A REASONABLE DOUBT THAT THE
24 DEFENDANT WAS PRESENT AT THE SCENE OF THE ALLEGED CRIME,
25 IT IS YOUR DUTY TO FIND THE DEFENDANT NOT GUILTY.

1 THE DEFENDANT HAS ENTERED A PLEA OF NOT
2 GUILTY. THIS MEANS YOU MUST PRESUME OR BELIEVE THE
3 DEFENDANT IS INNOCENT. THE PRESUMPTION STAYS WITH THE
4 DEFENDANT AS TO EACH MATERIAL ALLEGATION IN THE
5 INFORMATION THROUGH EACH STAGE OF THE TRIAL UNTIL IT
6 HAS BEEN OVERCOME BY THE EVIDENCE TO THE EXCLUSION OF
7 AND BEYOND A REASONABLE DOUBT.

8 TO OVERCOME THE DEFENDANT'S PRESUMPTION OF
9 INNOCENCE, THE STATE HAS THE BURDEN OF PROVING THE
10 FOLLOWING TWO ELEMENTS:

11 ONE, THE CRIME WITH WHICH THE DEFENDANT IS
12 CHARGED WAS COMMITTED.

13 AND, TWO, THE DEFENDANT IS THE PERSON WHO
14 COMMITTED THE CRIME.

15 THE DEFENDANT IS NOT REQUIRED TO PROVE
16 ANYTHING.

17 WHENEVER THE WORDS "REASONABLE DOUBT" ARE
18 USED, YOU MUST CONSIDER THE FOLLOWING: A REASONABLE
19 DOUBT IS NOT A POSSIBLE DOUBT, A SPECULATIVE, IMAGINARY,
20 OR FORCED DOUBT. SUCH A DOUBT MUST NOT INFLUENCE YOU
21 TO RETURN A VERDICT OF NOT GUILTY IF YOU HAVE AN ABIDING
22 CONVICTION OF GUILT.

23 ON THE OTHER HAND, IF AFTER CAREFULLY
24 CONSIDERING, COMPARING, AND WEIGHING ALL THE EVIDENCE
25 THERE IS NOT AN ABIDING CONVICTION OF GUILT, OR IF

1 HAVING A CONVICTION IT IS ONE WHICH IS NOT STABLE BUT
2 ONE WHICH WAVERS AND VACILLATES, THEN THE CHARGE IS NOT
3 PROVED BEYOND EVERY REASONABLE DOUBT, AND YOU MUST FIND
4 THE DEFENDANT NOT GUILTY BECAUSE THE DOUBT IS REASONABLE.

5 IT IS TO THE EVIDENCE INTRODUCED UPON THIS
6 TRIAL AND TO IT ALONE THAT YOU ARE TO LOOK FOR THAT
7 PROOF.

8 A REASONABLE DOUBT AS TO THE GUILT OF THE
9 DEFENDANT MAY ARISE FROM THE EVIDENCE, CONFLICT IN THE
10 EVIDENCE, OR THE LACK OF EVIDENCE.

11 IF YOU HAVE HAVE A REASONABLE DOUBT, YOU
12 SHOULD FIND THE DEFENDANT NOT GUILTY. IF YOU HAVE NO
13 REASONABLE DOUBT, YOU SHOULD FIND THE DEFENDANT GUILTY.

14 IT IS UP TO YOU TO DECIDE WHAT EVIDENCE IS
15 RELIABLE. YOU SHOULD USE YOUR COMMON SENSE IN DECIDING
16 WHICH IS THE BEST EVIDENCE AND WHICH EVIDENCE SHOULD
17 NOT BE RELIED UPON IN CONSIDERING YOUR VERDICT.

18 YOU MAY FIND SOME OF THE EVIDENCE NOT
19 RELIABLE, OR LESS RELIABLE THAN OTHER EVIDENCE. YOU
20 SHOULD CONSIDER HOW THE WITNESSES ACTED, AS WELL AS
21 WHAT THEY SAID. SOME THINGS YOU SHOULD CONSIDER ARE:

22 DID THE WITNESS SEEM TO HAVE AN OPPORTUNITY
23 TO SEE AND KNOW THE THINGS ABOUT WHICH THE WITNESS
24 TESTIFIED?

25 DID THE WITNESS SEEM TO HAVE AN ACCURATE

1 MEMORY?

2 WAS THE WITNESS HONEST AND STRAIGHTFORWARD
3 IN ANSWERING THE ATTORNEYS' QUESTIONS?

4 DID THE WITNESS HAVE SOME INTEREST IN HOW
5 THE CASE SHOULD BE DECIDED?

6 DOES THE WITNESS' TESTIMONY AGREE WITH THE
7 OTHER TESTIMONY AND OTHER EVIDENCE IN THE CASE?

8 DID THE WITNESS AT SOME OTHER TIME MAKE A
9 STATEMENT THAT IS INCONSISTENT WITH THE TESTIMONY HE
10 OR SHE GAVE IN COURT?

11 YOU MAY RELY UPON YOUR OWN CONCLUSION ABOUT
12 THE WITNESS. A JUROR MAY BELIEVE OR DISBELIEVE ALL OR
13 ANY PART OF THE EVIDENCE OR THE TESTIMONY OF ANY WITNESS.

14 THE DEFENDANT IN THIS CASE HAS BECOME A
15 WITNESS. YOU SHOULD APPLY THE SAME RULES TO
16 CONSIDERATION OF HIS TESTIMONY THAT YOU APPLY TO THE
17 TESTIMONY OF THE OTHER WITNESSES.

18 A STATEMENT CLAIMED TO HAVE BEEN MADE BY
19 THE DEFENDANT OUTSIDE OF COURT HAS BEEN PLACED BEFORE
20 YOU. SUCH A STATEMENT SHOULD ALWAYS BE CONSIDERED WITH
21 CAUTION AND BE WEIGHED WITH GREAT CARE TO MAKE CERTAIN
22 IT WAS FREELY AND VOLUNTARILY MADE.

23 THEREFORE, YOU MUST DETERMINE FROM THE
24 EVIDENCE THAT THE DEFENDANT'S ALLEGED STATEMENT WAS
25 KNOWINGLY, VOLUNTARILY AND FREELY MADE.

1 IN MAKING THIS DETERMINATION YOU SHOULD
2 CONSIDER THE TOTAL CIRCUMSTANCES, INCLUDING BUT NOT
3 LIMITED TO WHETHER, WHEN THE DEFENDANT MADE THE STATEMENT
4 HE HAD BEEN THREATENED IN ORDER TO GET HIM TO MAKE IT
5 AND WHETHER ANYONE HAD PROMISED HIM ANYTHING IN ORDER
6 TO GET HIM TO MAKE IT.

7 IF YOU CONCLUDE THE DEFENDANT'S OUT-OF-COURT
8 STATEMENT WAS NOT FREELY AND VOLUNTARILY MADE, YOU
9 SHOULD DISREGARD IT.

10 THESE ARE SOME GENERAL RULES THAT APPLY TO
11 YOUR DISCUSSION. YOU MUST FOLLOW THESE RULES IN ORDER
12 TO RETURN A LAWFUL VERDICT.

13 YOU MUST FOLLOW THE LAW AS IT IS SET OUT IN
14 THESE INSTRUCTIONS. IF YOU FAIL TO FOLLOW THE LAW YOUR
15 VERDICT WILL BE A MISCARRIAGE OF JUSTICE. THERE IS NO
16 REASON FOR FAILING TO FOLLOW THE LAW IN THIS CASE.
17 ALL OF US ARE DEPENDING UPON YOU TO MAKE A WISE AND
18 LEGAL DECISION IN THIS MATTER.

19 THE CASE MUST BE DECIDED ONLY UPON THE
20 EVIDENCE THAT YOU HAVE HEARD FROM THE ANSWERS OF THE
21 WITNESSES AND HAVE SEEN IN THE FORM OF THE EXHIBITS
22 IN EVIDENCE AND THESE INSTRUCTIONS.

23 THIS CASE MUST NOT BE DECIDED FOR OR AGAINST
24 ANYONE BECAUSE YOU FEEL SORRY FOR ANYONE OR ARE ANGRY
25 AT ANYONE.

1 REMEMBER, THE LAWYERS ARE NOT ON TRIAL.
2 YOUR FEELINGS ABOUT THEM SHOULD NOT INFLUENCE YOUR
3 DECISION IN THIS CASE.

4 YOUR DUTY IS TO DETERMINE IF THE DEFENDANT
5 IS GUILTY OR NOT GUILTY IN ACCORD WITH THE LAW. IT IS
6 THE JUDGE'S JOB TO DETERMINE WHAT A PROPER SENTENCE
7 WOULD BE IF THE DEFENDANT IS GUILTY.

8 WHATEVER VERDICT YOU RENDER MUST BE UNANIMOUS.
9 THAT IS, EACH JUROR MUST AGREE TO THE SAME VERDICT.

10 IT IS ENTIRELY PROPER FOR A LAWYER TO TALK
11 TO A WITNESS ABOUT WHAT TESTIMONY THE WITNESS WOULD
12 GIVE IF CALLED TO THE COURTROOM. THE WITNESS SHOULD
13 NOT BE DISCREDITED BY TALKING TO A LAWYER ABOUT HIS
14 OR HER TESTIMONY.

15 FEELINGS OF PREJUDICE, BIAS, OR SYMPATHY
16 ARE NOT LEGALLY REASONABLE DOUBTS, AND THEY SHOULD
17 NOT BE DISCUSSED BY ANY OF YOU IN ANY WAY.

18 YOUR VERDICT MUST BE BASED ON YOUR VIEWS
19 OF THE EVIDENCE AND ON THE LAW CONTAINED IN THESE
20 INSTRUCTIONS.

21 DECIDING A VERDICT IS EXCLUSIVELY YOUR JOB.
22 I CANNOT PARTICIPATE IN THAT DECISION IN ANY WAY.
23 PLEASE DISREGARD ANYTHING I MAY HAVE SAID OR DONE THAT
24 MADE YOU THINK I PREFERRED ONE VERDICT OVER ANOTHER.

25 ONLY ONE VERDICT MAY BE RETURNED AS TO EACH

1 CRIME CHARGED. THIS VERDICT MUST BE UNANIMOUS. THAT
2 IS, ALL OF YOU MUST AGREE TO THE SAME VERDICT.

3 THE VERDICT MUST BE IN WRITING, AND FOR
4 YOUR CONVENIENCE THE NECESSARY FORMS OF VERDICT HAVE
5 BEEN PREPARED FOR YOU. AND THEY ARE AS FOLLOWS:

6 WE HAVE TWO FORMS; ONE, FOR COUNT ONE OF THE
7 INFORMATION, AND ONE FOR COUNT TWO OF THE INFORMATION.
8 I'LL GO OVER EACH OF THEM INDIVIDUALLY FOR YOU.

9 THIS IS THE VERDICT FORM FOR COUNT ONE OF
10 THE INFORMATION. IN THE UPPER RIGHT-HAND CORNER IS
11 THE STYLE OF THE COURT AND THE CIRCUIT COURT IN AND
12 FOR ORANGE COUNTY, FLORIDA, DIVISION TEN, CASE NUMBER
13 CR 90-5351; INFORMATION FOR CAPITAL SEXUAL BATTERY,
14 STATE OF FLORIDA, PLAINTIFF, VERSUS SCOTTY MERSON,
15 DEFENDANT. COUNT ONE, VERDICT:

16 LINE ONE READS: WE, THE JURY, FIND THE
17 DEFENDANT GUILTY AS CHARGED IN THE INFORMATION, OF
18 SEXUAL BATTERY UPON A CHILD LESS THAN 12 YEARS OF AGE.

19 THERE'S A BLANK SPOT OUT TO THE LEFT. THE
20 SECOND LINE ALSO A BLANK SPOT, AND IT SAYS: WE, THE
21 JURY, FIND THE DEFENDANT GUILTY OF THE LESSER INCLUDED
22 OFFENSE OF BATTERY.

23 AND THE THIRD LINE SAYS: WE, THE JURY,
24 FIND THE DEFENDANT NOT GUILTY.

25 ALSO, AT THE BOTTOM OF THE VERDICT FORM ON

1 THE LAST TWO LINES IT SAYS: WE THE JURY, FIND THE
2 DEFENDANT IS OVER THE AGE OF 18. AND THE LAST LINE
3 SAYS: WE, THE JURY, FIND THE VICTIM, ANGELA [REDACTED],
4 WAS LESS THAN 12 YEARS OF AGE.

5 IN THIS INSTANCE YOU NEED TO MAKE THOSE
6 DETERMINATIONS. AND IF YOU MAKE THE DETERMINATION
7 CONCERNING AGE, YOU CHECK THE APPROPRIATE VERDICT
8 FORM. IF YOU DO NOT MAKE THAT DETERMINATION, YOU DO
9 NOT CHECK IT.

10 YOU MAY RETURN ONE VERDICT. THAT IS, OF
11 THE THREE VERDICTS AT THE TOP. THE ORIGINAL CHARGE
12 OF SEXUAL BATTERY UPON A CHILD LESS THAN 12 YEARS OF
13 AGE IS THE ORIGINAL CHARGE. THE LESSER INCLUDED
14 OFFENSE IS BATTERY. THE OTHER VERDICT IS NOT GUILTY.

15 SO THERE ARE THREE VERDICTS, ONE OF WHICH
16 YOU MAY RETURN. AND IN DOING THAT YOU HAVE TO MAKE A
17 DETERMINATION AS TO WHETHER THE DEFENDANT WAS OVER THE
18 AGE OF 18, OR NOT AND WHETHER THE VICTIM WAS LESS THAN
19 12 YEARS OF AGE, OR NOT.

20 ONCE YOU HAVE REACHED THAT VERDICT, THE
21 FOREPERSON WILL DATE THE FORM AND SIGN IT.

22 COUNT TWO, THE FORM IS IDENTICAL IN MANY
23 RESPECTS. AT THE TOP, THE STYLE OF THE CASE AND THE
24 CASE NUMBER.

25 IT SAYS: INFORMATION FOR BURGLARY OF A

1 DWELLING WITH BATTERY THEREIN; STATE OF FLORIDA,
2 PLAINTIFF, VERSUS SCOTTY MERSON, DEFENDANT.

3 COUNT TWO, VERDICT. AND THERE ARE, AGAIN,
4 THREE LINES.

5 ON BOTH OF THESE VERDICTS, UPON THE JURY
6 REACHING A VERDICT, THE FOREPERSON IS TO MAKE A CHECK
7 MARK OR AN "X" MARK ON THE APPROPRIATE LINE ONCE THE
8 VERDICT HAS BEEN ARRIVED AT.

9 THE FIRST LINE SAYS: WE, THE JURY, FIND
10 THE DEFENDANT GUILTY AS CHARGED IN THE INFORMATION OF
11 BURGLARY OF A DWELLING WITH A BATTERY THEREIN.

12 THE SECOND LINE SAYS: WE, THE JURY, FIND
13 THE DEFENDANT GUILTY OF THE LESSER INCLUDED OFFENSE
14 OF BURGLARY OF A DWELLING.

15 AND THE THIRD LINE SAYS: WE, THE JURY, FIND
16 THE DEFENDANT NOT GUILTY.

17 AND AT THE BOTTOM IT SAYS: SO SAY WE ALL.
18 ORLANDO, FLORIDA; DATED THIS BLANK DAY OF 1990, AND TO
19 BE SIGNED BY THE FOREPERSON.

20 ONLY ONE VERDICT MAY BE RETURNED AS TO THIS
21 CHARGE. SO THE JURY, UPON REACHING A UNANIMOUS VERDICT,
22 WILL PICK ONE OF THESE THREE OPTIONS AND MARK IT AND
23 DATE IT AND SIGN IT WHEN YOU HAVE ARRIVED AT YOUR
24 VERDICT.

25 A SEPARATE CRIME IS CHARGED IN EACH COUNT

1 OF THE INFORMATION. AND WHILE THEY HAVE BEEN TRIED
2 TOGETHER, EACH CRIME AND THE EVIDENCE APPLICABLE TO IT
3 MUST BE CONSIDERED SEPARATELY AND A SEPARATE VERDICT
4 RETURNED AS TO EACH.

5 A FINDING OF GUILTY OR NOT GUILTY AS TO ONE
6 CRIME MUST NOT AFFECT YOUR VERDICT AS TO THE OTHER CRIME
7 CHARGED.

8 IN JUST A FEW MOMENTS YOU WILL BE TAKEN TO
9 THE JURY ROOM BY THE BAILIFF. THE FIRST THING YOU
10 SHOULD DO IS ELECT A FOREPERSON.

11 THE FOREPERSON PRESIDES OVER YOUR
12 DELIBERATIONS LIKE THE CHAIRPERSON OF A MEETING. IT
13 IS THE FOREPERSON'S JOB TO SIGN AND DATE THE VERDICT
14 FORM WHEN ALL OF YOU HAVE AGREED ON A VERDICT IN THIS
15 CASE. THE FOREPERSON WILL BRING THE VERDICT BACK
16 TO THE COURTROOM WHEN YOU RETURN.

17 YOUR VERDICT FINDING THE DEFENDANT EITHER
18 GUILTY OR NOT GUILTY MUST BE UNANIMOUS.

19 THE VERDICT MUST BE THE VERDICT OF EACH
20 JUROR, AS WELL AS OF THE JURY AS A WHOLE.

21 IN CLOSING, LET ME REMIND YOU THAT IT IS
22 IMPORTANT THAT YOU FOLLOW THE LAW SPELLED OUT IN THESE
23 INSTRUCTIONS IN DECIDING YOUR VERDICT. THERE ARE NO
24 OTHER LAWS THAT APPLY TO THIS CASE.

25 EVEN IF YOU DO NOT LIKE THE LAWS THAT MUST

1 BE APPLIED, YOU MUST USE THEM. FOR TWO CENTURIES WE
2 HAVE AGREED TO A CONSTITUTION AND TO LIVE BY THE LAW.

3 ANY OBJECTION TO THE INSTRUCTIONS, OTHER
4 THAN THOSE PREVIOUSLY NOTED BY THE STATE?

5 MR. BENDER: NO, YOUR HONOR.

6 THE COURT: ANY OBJECTIONS BY THE DEFENSE, OTHER
7 THAN THOSE PREVIOUSLY NOTED BY THE DEFENSE?

8 MR. EIDE: NO, YOUR HONOR.

9 THE COURT: VERY WELL. LADIES AND GENTLEMEN, YOU
10 MAY RETIRE TO DELIBERATE YOUR VERDICT. I'LL ASK THE
11 ALTERNATES TO REMAIN.

12 (THEREUPON, THE JURY DEPARTED THE COURTROOM, AFTER
13 WHICH THE FOLLOWING PROCEEDINGS TRANSPIRED:)

14 THE COURT: COUNSEL, APPROACH THE BENCH.

15 THE ONLY THING I'VE GOT MARKED HERE IS THE
16 MIRANDA CARD AND THE PHOTOS, THE TWO VERDICT FORMS.
17 WHAT I WOULD LIKE TO DO IS SUBMIT A LEGAL PAD AND A
18 PEN, GIVE THEM A GOOD PEN, HERE. SO IF YOU ALL WILL
19 GIVE THAT TO THEM.

20 (THEREUPON, COURT RECESSED AT 4:08 P.M., PENDING
21 THE RETURN OF THE JURY VERDICTS.)

22 * * * * *

23 (THEREUPON, A JURY QUESTION WAS HAD AND ANSWERED
24 IN WRITING BY THE COURT, AFTER DISCUSSION WITH THE ATTORNEYS
25 IN CHAMBERS, AND THE COURT REPORTER NOT PRESENT.)