

STATE OF WISCONSIN,

Plaintiff,

-vs-

STEVEN A. AVERY,

Defendant.

Case No. 05 CF 381

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MANITOWOC COUNTY
STATE OF WISCONSIN
FILED

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CLERK OF CIRCUIT COURT

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100 INTRODUCTION

Members of the jury:

The court will now instruct you upon the principles of law which you are to follow in considering the evidence and in reaching your verdict.

It is your duty to follow all of these instructions. Regardless of any opinion you may have about what the law is or ought to be, you must base your verdict on the law I give you in these instructions. Apply that law to the facts in the case which have been properly proven by the evidence. Consider only the evidence received during this trial and the law as given to you by these instructions and from these alone, guided by your soundest reason and best judgment, reach your verdict.

If any member of the jury has an impression of my opinion as to whether the defendant is guilty or not guilty, disregard that impression entirely and decide the issues of fact solely as you view the evidence. You, the jury, are the sole judges of the facts, and the court is the judge of the law only.

103 EVIDENCE DEFINED

Evidence is:

First, the sworn testimony of witnesses, both on direct and cross-examination, regardless of who called the witness.

Second, the exhibits the court has received, whether or not an exhibit goes to the jury room.

Third, any facts or testimony to which the lawyers have agreed or stipulated or which the court has directed you to find.

Anything you may have seen or heard outside the courtroom is not evidence. You are to decide the case solely on the evidence offered and received at trial.

115 ONE DEFENDANT: THREE COUNTS

The defendant in this case is charged with three counts. A fourth count of False Imprisonment has been dismissed. The instructions for the three remaining counts have been modified somewhat from the opening instructions given to you at the beginning of the trial to conform to the evidence introduced at trial.

COUNT 1

The first count of the Information in this case charges that: Steven Avery, on Monday, October 31, 2005, at 12932 Avery Road, Town of Gibson, Manitowoc, Wisconsin, did cause the death of Teresa M. Halbach, with intent to kill that person, contrary to sec. 940.01(1)(a) Wis. Stats.

To this charge, the defendant has entered a plea of not guilty which means the State must prove every element of the offense charged beyond a reasonable doubt.

1010 FIRST DEGREE INTENTIONAL HOMICIDE - § 940.01(1)(a)

Statutory Definition of the Crime

First degree intentional homicide, as defined in § 940.01 of the Criminal Code of Wisconsin, is committed by one who causes the death of another human being with the intent to kill that person or another.

State's Burden of Proof

Before you may find the defendant guilty of first degree intentional homicide, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following two elements were present.

Elements of the Crime That the State Must Prove

1. The defendant caused the death of Teresa Halbach.

"Cause" means that the defendant's act was a substantial factor in producing the death.

2. The defendant acted with the intent to kill Teresa Halbach.

"Intent to kill" means that the defendant had the mental purpose to take the life of another human being or was aware that

his conduct was practically certain to cause the death of another human being.

When May Intent Exist?

While the law requires that the defendant acted with intent to kill, it does not require that the intent exist for any particular length of time before the act is committed. The act need not be brooded over, considered, or reflected upon for a week, a day, an hour, or even for a minute. There need not be any appreciable time between the formation of the intent and the act. The intent to kill may be formed at any time before the act, including the instant before the act, and must continue to exist at the time of the act.

Deciding About Intent

You cannot look into a person's mind to find intent. Intent to kill must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon intent.

Intent and Motive

Intent should not be confused with motive. While proof of intent is necessary to a conviction, proof of motive is not. "Motive" refers to a person's reason for doing something. While motive or lack of motive is relevant and may be shown as a circumstance to aid in establishing the guilt or innocence of a defendant, the State is not required to prove motive on the part of a defendant in order to convict. Evidence of motive does not by itself establish guilt. You should give it the weight you believe it deserves under all of the circumstances.

Jury's Decision

If you are satisfied beyond a reasonable doubt that the defendant caused the death of Teresa Halbach with the intent to kill, you should find the defendant guilty of first degree intentional homicide.

If you are not so satisfied, you must find the defendant not guilty.

COUNT 2

The second count of the Information charges that: Steven Avery, between Monday, October 31, 2005, and Friday, November 4, 2005, at 12932 Avery Road, Manitowoc County, Wisconsin, did mutilate, disfigure or dismember a corpse with the intent to conceal a crime, contrary to sec. 940.11(1), 939.50(3)(f) Wis. Stats.

To this charge, the defendant has also entered a plea of not guilty which means the State must prove every element of the offense charged beyond a reasonable doubt.

1193 MUTILATING A CORPSE - § 940.11(1)

Statutory Definition of the Crime

Mutilating a Corpse, as defined in Section 940.11(1) of the Criminal Code of Wisconsin, is violated by one who mutilates a corpse with intent to conceal a crime or avoid apprehension, prosecution, or conviction for a crime.

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following two elements were present.

Elements of the Crime That the State Must Prove

1. Steven Avery mutilated the corpse of Teresa Halbach.
2. In mutilating the corpse of Teresa Halbach, Steven Avery acted with the intent to conceal a crime.

This requires that the defendant acted with the purpose to conceal a crime.

Deciding About Intent

You cannot look into a person's mind to find out intent. Intent must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon intent.

Jury's Decision

If you are satisfied beyond a reasonable doubt that both elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

THEORY OF DEFENSE

The defendant's theory of defense on the charges of First Degree Intentional Homicide and Mutilation of a Corpse is that another person or persons tried to frame him for the murder of Teresa Halbach and the burning of her body. If the facts introduced in support of the defendant's theory raise a reasonable doubt in your mind, or if you otherwise find that a reasonable doubt arises from the evidence, then you must find the defendant not guilty of the charges.

COUNT 3

The third count of the Information charges that: Steven Avery, on Saturday, November 5, 2005, at 12932 Avery Road, Manitowoc County, Wisconsin, did possess a firearm subsequent to the conviction for the felony or other crime, as specified in sub. (1)(a) or (b), contrary to sec. 941.29(2)(a), 939.50(3)(g) Wis. Stats.

To this charge, the defendant has also entered a plea of not guilty which means the State must prove every element of the offense charged beyond a reasonable doubt.

1343 POSSESSION OF A FIREARM - § 941.29
920 POSSESSION

Statutory Definition of the Crime

Section 941.29 of the Criminal Code of Wisconsin is violated by a person who possesses a firearm if that person has been convicted of a felony.

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following two elements were present.

Elements of the Crime That the State Must Prove

1. The defendant possessed a firearm.

"Firearm" means a weapon which acts by the force of gunpowder. It is not necessary that the firearm was loaded or capable of being fired.

"Possess" means that the defendant knowingly had actual physical control of a firearm.

An item is also in a person's possession if it is in an area over which the person has control and the person intends to exercise control over the item. It is not required that a person own an item in order to possess it. What is required is that the person exercise control over the item.

2. The defendant had been convicted of a felony before November 5, 2005.

The parties have agreed that Steven Avery was convicted of a felony before November 5, 2005 and you must accept this as conclusively proved.

Jury's Decision

If you are satisfied beyond a reasonable doubt that both elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

140 BURDEN OF PROOF AND PRESUMPTION OF INNOCENCE

In reaching your verdict, examine the evidence with care and caution. Act with judgment, reason, and prudence.

Presumption of Innocence

Defendants are not required to prove their innocence. The law presumes every person charged with the commission of an offense to be innocent. This presumption requires a finding of not guilty unless in your deliberations, you find it is overcome by evidence which satisfies you beyond a reasonable doubt that the defendant is guilty.

State's Burden of Proof

The burden of establishing every fact necessary to constitute guilt is upon the State. Before you can return a verdict of guilty, the evidence must satisfy you beyond a reasonable doubt that the defendant is guilty.

Reasonable Hypothesis

If you can reconcile the evidence upon any reasonable hypothesis consistent with the defendant's innocence, you should do so and return a verdict of not guilty.

Meaning of Reasonable Doubt

The term "reasonable doubt" means a doubt based upon reason and common sense. It is a doubt for which a reason can be given, arising from a fair and rational consideration of the evidence or lack of evidence. It means such a doubt as would cause a person of ordinary prudence to pause or hesitate when called upon to act in the most important affairs of life.

A reasonable doubt is not a doubt which is based on mere guesswork or speculation. A doubt which arises merely from sympathy or from fear to return a verdict of guilt is not a reasonable doubt. A reasonable doubt is not a doubt such as may be used to escape the responsibility of a decision.

While it is your duty to give the defendant the benefit of every reasonable doubt, you are not to search for doubt. You are to search for the truth.

145 INFORMATION NOT EVIDENCE

An information is nothing more than a written, formal accusation against a defendant charging the commission of one or more criminal acts. You are not to consider it as evidence against the defendant in any way. It does not raise any inference of guilt.

147 IMPROPER QUESTIONS

Disregard entirely any question that the court did not allow to be answered. Do not guess at what the witness' answer might have been. If the question itself suggested that certain

information might be true, ignore the suggestion and do not consider it as evidence.

148 OBJECTIONS OF COUNSEL; EVIDENCE RECEIVED OVER OBJECTION

Attorneys for each side have the right and the duty to object to what they consider are improper questions asked of witnesses and to the admission of other evidence which they believe is not properly admissible. You should not draw any conclusions from the fact an objection was made.

By allowing testimony or other evidence to be received over the objection of counsel, the court is not indicating any opinion about the evidence. You jurors are the judges of the credibility of the witnesses and the weight of the evidence.

150 STRICKEN TESTIMONY

During the trial, the court has ordered certain testimony to be stricken. Disregard all stricken testimony.

155 EXHIBITS

An exhibit becomes evidence only when received by the court. An exhibit marked for identification and not received is not evidence. An exhibit received is evidence, whether or not it goes to the jury room.

58 TRANSCRIPTS NOT AVAILABLE FOR DELIBERATIONS; READING BACK TESTIMONY

You will not have a copy of the written transcript of the trial testimony available for use during your deliberations. You may ask to have specific portions of the testimony read to you. You must continue to rely primarily on your memory of the evidence and testimony introduced during the trial.

157 REMARKS OF COUNSEL

Remarks of the attorneys are not evidence. If the remarks suggested certain facts not in evidence, disregard the suggestion.

160 CLOSING ARGUMENTS OF COUNSEL

Consider carefully the closing arguments of the attorneys, but their arguments and conclusions and opinions are not evidence. Draw your own conclusions from the evidence, and decide upon your verdict according to the evidence, under the instructions given you by the court.

170 CIRCUMSTANTIAL EVIDENCE

It is not necessary that every fact be proved directly by a witness or an exhibit. A fact may be proved indirectly by circumstantial evidence. Circumstantial evidence is evidence from which a jury may logically find other facts according to common knowledge and experience.

Circumstantial evidence is not necessarily better or worse than direct evidence. Either type of evidence can prove a fact.

Whether evidence is direct or circumstantial, it must satisfy you beyond a reasonable doubt that the defendant committed the offense before you may find the defendant guilty.

180 STATEMENTS OF DEFENDANT

The State has introduced evidence of statements which it claims were made by the defendant. It is for you to determine how much weight, if any, to give to each statement.

In evaluating each statement, you must determine three things:

- whether the statement was actually made by the defendant. Only so much of a statement as was actually made by a person may be considered as evidence.
- whether the statement was accurately restated here at trial.
- whether the statement or any part of it ought to be believed.

You may also consider the consistency or inconsistency with any other statements made by the defendant.

You should consider the facts and circumstances surrounding the making of each statement, along with all the other evidence in determining how much weight, if any, the statement deserves.

190 WEIGHT OF EVIDENCE

The weight of evidence does not depend on the number of witnesses on each side. You may find that the testimony of one witness is entitled to greater weight than that of another witness or even of several other witnesses.

195 JUROR'S KNOWLEDGE

In weighing the evidence, you may take into account matters of your common knowledge and your observations and experience in the affairs of life.

200 EXPERT OPINION TESTIMONY: GENERAL

Ordinarily, a witness may testify only about facts. However, a witness with expertise in a particular field may give an opinion in that field.

You should consider:

- the qualifications and credibility of the expert;
- the facts upon which the opinion is based; and
- the reasons given for the opinion.

Opinion evidence was received to help you reach a conclusion. However, you are not bound by any expert's opinion. You may give as much or as little weight to the opinion of any expert as you conclude it is entitled to receive.

In resolving conflicts in expert testimony, weigh the different expert opinions against each other. Also consider the qualifications and credibility of the experts and the facts supporting their opinions.

205 EXPERT TESTIMONY: HYPOTHETICAL QUESTIONS

During the trial, an expert witness was told to assume certain facts and then was asked for an opinion based upon that assumption. This is called a hypothetical question.

The opinion does not establish the truth of the facts upon which it is based. Consider the opinion only if you believe the assumed facts upon which it is based have been proved. If you find that the facts stated in the hypothetical question have not been proved, then the opinion based on those facts should not be given any weight.

300 CREDIBILITY OF WITNESSES

It is the duty of the jury to scrutinize and to weigh the testimony of witnesses and to determine the effect of the evidence as a whole. You are the sole judges of the credibility, that is, the believability, of the witnesses and of the weight to be given to their testimony.

In determining the credibility of each witness and the weight you give to the testimony of each witness, consider these factors:

- whether the witness has an interest or lack of interest in the result of this trial;
- the witness' conduct, appearance, and demeanor on the witness stand;
- the clearness or lack of clearness of the witness' recollections;
- the opportunity the witness had for observing and for knowing the matters the witness testified about;
- the reasonableness of the witness' testimony;
- the apparent intelligence of the witness;
- bias or prejudice, if any has been shown;
- consistency or inconsistency with any prior statements of the witness;
- possible motives for falsifying testimony; and

- all other facts and circumstances during the trial which tend either to support or to discredit the testimony.

Then give to the testimony of each witness the weight you believe it should receive.

There is no magic way for you to evaluate the testimony; instead, you should use your common sense and experience. In everyday life, you determine for yourselves the reliability of things people say to you. You should do the same thing here.

315 DEFENDANT ELECTS NOT TO TESTIFY

A defendant in a criminal case has the absolute constitutional right not to testify.

The defendant's decision not to testify must not be considered by you in any way and must not influence your verdict in any manner.

460 CLOSING INSTRUCTION

Now, members of the jury, the duties of counsel and the court have been performed. The case has been argued by counsel. The court has instructed you regarding the rules of law which should govern you in your deliberations. The time has now come when the great burden of reaching a just, fair, and conscientious decision of this case is to be thrown wholly upon you, the jurors, selected for this important duty. You will not be swayed by sympathy, prejudice, or passion. You will be very careful and deliberate in weighing the evidence. I charge you to keep your duty steadfastly in mind and, as upright citizens, to render a just and true verdict.

[Give instructions on the verdicts submitted.]

484 VERDICTS SUBMITTED FOR ONE DEFENDANT: THREE COUNTS: SEPARATE VERDICT ON EACH COUNT REQUIRED

The following six forms of verdict will be submitted to you concerning the charges against the defendant, Steven A. Avery.

One reading: "We, the jury, find the defendant, Steven A. Avery, guilty of First Degree Intentional Homicide, as charged in the first count of the Information."

A second reading: "We, the jury, find the defendant, Steven A. Avery, not guilty of First Degree Intentional Homicide, as charged in the first count of the Information."

A third reading: "We, the jury, find the defendant, Steven A. Avery, guilty of Mutilating a Corpse, as charged in the second count of the Information."

And a fourth reading: "We, the jury, find the defendant, Steven A. Avery, not guilty of Mutilating a Corpse, as charged in the second count of the Information."

A fifth reading: "We, the jury, find the defendant, Steven A. Avery, guilty of Possession of a Firearm, as charged in the third count of the Information."

And a sixth reading: "We, the jury, find the defendant, Steven A. Avery, not guilty of Possession of a Firearm, as charged in the third count of the Information."

It is for you to determine whether the defendant is guilty or not guilty of each of the offenses charged. You must make a finding as to each count of the information. Each count charges a separate crime, and you must consider each one separately. Your verdict for the crime charged in one count must not affect your verdict on any other count.

515 UNANIMOUS VERDICT AND SELECTION OF PRESIDING JUROR

This is a criminal, not a civil, case; therefore, before the jury may return a verdict which may legally be received, the verdict must be reached unanimously. In a criminal case, all 12 jurors must agree in order to arrive at a verdict.

When you retire to the jury room, select one of your members to preside over your deliberations. That person's vote is entitled to no greater weight than the vote of any other juror.

When you have agreed upon your verdict, have it signed and dated by the person you have selected to preside.

Swear the officer.