



MINNESOTA JUDICIAL TRAINING UPDATE



CAUTIONARY JURY INSTRUCTIONS DURING TRIAL

Problem: You're In The Middle Of Trial And Something Occurs (Usually An Evidentiary Issue) That Requires A Cautionary Instruction Be Given To The Jury. To Help Minimize The Potential For Delay, Below Is A List Of 15 Common (JIG and NON-JIG) Cautionary Instructions Designed For Easy Access During Trial.

Note: The giving of cautionary instructions by the district court is a significant factor favoring the denial of a motion for a mistrial." *State v. Caldwell*, 322 N.W.2d 574, 590 (Minn. 1982). The court should normally ask the other party if they agree with the cautionary instruction to be given.

15 COMMON CAUTIONARY INSTRUCTIONS

- 1) **CRIMJIG 2.08** Instruction At First Recess or Adjournment
- 2) **CRIMJIG 2.01:** Spreigl Evidence
- 3) **CRIMJIG 2.02:** Use of Prior Conviction - Impeachment
- 4) **CRIMJIG 2.03:** Prior Inconsistent Statement - Impeachment
- 5) **CRIMJIG 2.04:** Demonstrative Evidence; Computer Generated Animation
- 6) **CRIMJIG 2.05:** Use of Interpreter
- 7) **CRIMJIG 2.06** (Weapon) (Firearm) As Evidence in The Courtroom
- 8) **CRIMJIG 2.07:** Testimony of Other Domestic Abuse Occurrences (Relationship Evidence)
- 9) Use of Transcript of Tape Recording (Olkon Instruction)
- 10) Redaction of Portion of Video or Audio Tape Recording
- 11) 911 Call Instruction (Non – Hearsay; not qualifying as an excited utterance)
- 12) Non - Hearsay Statements (Law Enforcement and Non-Law Enforcement)
- 13) Battered Woman Syndrome
- 14) Testimony of Immunized Witness
- 15) Testimony of Informant – Option #1 and #2

1) CRIMJIG 2.08 Instruction at First Recess or Adjournment

We will now (recess for ___ minutes) (adjourn for the day). I want to remind you of the instructions I gave you earlier regarding your conduct as jurors. Please keep these in mind each time we recess and when we adjourn for the day. While I will try to repeat the instructions to help you remember, I may not always do so. This does not mean they do not apply.

Do not let outsiders influence you. Do not discuss this case with other jury members during the trial. You will have plenty of time to do this at the end of the trial, once you have all the evidence and I have sent you to the jury room with my instructions and the verdict forms.

Do not talk to anyone involved in this case: the defendant, the lawyers, or the witnesses. If anyone tries to discuss this case with you outside the courtroom, report this to me.

When you go home during the trial, do not talk to your family, friends, or others about the case. You may tell them you are a juror on a criminal case and that is all that you should tell them. Do not report your experiences as a juror while the trial and deliberations are going on. Do not e-mail, blog, tweet, text or post anything to your Facebook, MySpace, or other social networking sites about this trial. Do not visit any “chat rooms” where this case may be discussed.

Do not read or listen to news reports about the case.

Do not do your own investigation. Do not ask people about this case. Do not visit any of the locations mentioned in the trial. Do not research anything about the case, including the issues, evidence, parties, witnesses, location, or the law, through any form of written, print, electronic or Internet media.

Keep an open mind until you have heard or seen all of the evidence.

Remember you cannot consider anything you hear or learn about this case outside this courtroom. If you do not follow these instructions, you may jeopardize the trial. This may require the whole trial to be redone and we will have to start over.

OPTION 2: Short Version: Instruction Before Lunch and Before Every Recess

Please remember, while court is in recess you must not talk to anyone who is involved in this case nor shall you discuss the case among yourselves. During the recess you may see the attorneys, parties, witnesses or myself in the hallways or outside. Don't take offense if we don't stop to say hello or talk with you. Everyone involved in this case has been ordered to have no contact or communication with any member of the Jury. Any violation of that order could jeopardize this trial. This prohibition shall continue until a verdict has been returned.

2) CRIMJIG 2.01: Testimony of Other Crimes or Occurrences: Spreigl Evidence

The State is about to introduce evidence of occurrences on _____ at _____. This evidence is being offered for the limited purpose of assisting you in determining whether the defendant committed those acts with which the defendant is charged in the complaint. [note: *If the Spreigl evidence only goes to the identity of defendant then you should add: This evidence is not to be used to prove the character of the defendant or that defendant acted in conformity with such character.*] [optional: In other words, this evidence is not to be used by you to infer from this conduct that the defendant was disposed to commit the crime for which he is now on trial.]

The defendant is not being tried for and may not be convicted of any offense(s) other than the charged offense(s). You are not to convict the defendant on the basis of occurrences on _____ at _____. To do so might result in unjust double punishment.

3) CRIMJIG 2.02: Use of Prior Conviction - Impeachment

The evidence concerning a prior conviction of (*the defendant*) (_____) is admitted only for your consideration in deciding whether (*the defendant*) (_____) is telling the truth in this case. You must not consider this conviction as evidence of (*the defendant's*) (_____) character or conduct except as you may think it reflects on believability.

4) CRIMJIG 2.03: Receipt of Prior Inconsistent Statement

The evidence that has just been received concerning a statement that _____ is alleged to have made sometime before testifying here is admitted only for the light it may cast on the truth of _____'s testimony at this trial. You must not consider the statement as evidence of the facts referred to in the statement.

5) CRIMJIG 2.04: Demonstrative Evidence; Computer Generated Animation

[The State] [Defendant] is about to introduce a computer-generated animation. This does not serve as proof of any facts in itself. It is presented only to aid your understanding of a witness' testimony or other evidence here in court. If the animation is not consistent with your evaluation of the testimony or other evidence, you should disregard the animation and determine the facts from the underlying testimony or other evidence.

6) **CRIMJIG 2.05: Use of Interpreter**

[[Name of language] may be used during this trial.]

Minnesota law provides that a defendant who cannot fully understand or participate in legal proceedings because of a difficulty speaking or comprehending English must be provided a qualified interpreter. This is because a defendant who lacks an understanding of the legal proceedings surrounding [her] [his] case cannot assist in the defense, challenge the accusers, and make informed choices regarding [her] [his] fundamental rights. It is through the use of qualified interpreters that defendants who cannot fully understand English are afforded the same fair treatment and opportunities in their defense as English speaking defendants.

[The state policy is to use [interpreters] [translators] where it is the judgment of the court that it is necessary to ensure fairness in a trial.]

[(Name of person) speaks and understands some English, but it is my judgment that (his)(her) understanding of English is not sufficient to ensure that (he) (she) has a full understanding of the proceedings. I have therefore authorized the use of [an interpreter] [a translator] in this case.]

[The decision to use [an interpreter] [a translator] is my decision.]

[[An interpreter] [A translator] is necessary for a defendant to understand everything that is said in the courtroom. The court instructs the [interpreter] [translator] to interpret every word that is said.]

[The use of [an interpreter] [a translator] may make the case take longer than it would without [an interpreter] [a translator]. You should not hold this against the defendant.]

7) **CRIMJIG 2.06 (Weapon) (Firearm) As Evidence in The Courtroom**

At some point in this trial a (weapon) (firearm) will be brought into the courtroom and offered as evidence. Any (weapon) (firearm) will be secured in a way to ensure it can be safely handled.

[You should know that:

1. The firearm has been examined and will come into the courtroom unloaded and secured with a device that will be visible to you and the court.
2. The firearm securing device will be such that it will physically impossible to operate the firing mechanism of the firearm or put a bullet into the firearm.
3. The firearm securing device will be locked and the key will be maintained by court staff.]

8) CRIMJIG 2.07: Receipt of Testimony of Other Domestic Abuse Occurrences

The State is about to introduce evidence of conduct by the defendant on _____ at _____. This evidence is being offered for the limited purpose of demonstrating the nature and extent of the relationship between the defendant and _____ [(and) (or) other (family) (household) members] in order to assist you in determining whether the defendant committed those acts with which the defendant is charged in the complaint.

The defendant is not being tried for and may not be convicted of any behavior other than the charged offense(s). You are not to convict the defendant on the basis of conduct on _____ at _____. To do so might result in unjust double punishment.

9) Cautionary Instruction on Use of Transcript of Tape Recording

You will each be provided with what is reported to be a transcript of the taped conversation. Because of the nature and quality of the tape, portions of the recording are difficult to hear from a distance. As a result, copies of the transcript will be provided to you to assist you in listening to the tape and will be collected from you at the conclusion of the playing of the tape. Any difference in understanding of meaning or meaning what was said may be caused by such factors as the inflection of a voice or inaccuracies of the transcript, and you should rely upon what you hear rather than what you read if you find a difference between the tape and the transcript. The transcript is not to control. The tape recording is to control. The transcript will not be available to you during your deliberations in reaching a verdict. State v. Olkon, 229 NW2d (Minn. 1980); see, United States v. McMillan, 508 F2d 101 (8th Cir. 1974).

10) Redaction of Portion of Video or Audio Tape Recording

Ladies and Gentleman, as I'm sure you noticed, a portion of the audio/video tape-recording that you just heard/viewed was redacted. I earlier ordered and both parties agreed that a designated portion of the audio/video tape be deleted. It was deleted because it had nothing to do with the issues in this case. You should not speculate concerning that deletion, and you are ordered to draw NO inference one way or the other concerning the deletion.

11) 911 Call Instruction (Non Hearsay - not qualifying as an excited utterance)

You will now hear a tape recording of a conversation between _____ and a 911 operator. This conversation is to be considered by you only for the purpose of establishing what the police officers reasonably believed had occurred on the evening of _____. You cannot consider these statements as substantive evidence of the defendant's guilt.

12) Non-Hearsay Statements (Law Enforcement and Non-Law Enforcement)

(a) Law Enforcement: You are about to hear testimony about statements made by _____ to the police. These statements are to be considered by you only for the purpose of establishing what the police officer reasonably believed had occurred on the evening of _____. You cannot consider these statements as substantive evidence of the defendant's guilt.

(b) Non-Law Enforcement: You are about to hear testimony about a statement made by _____ to _____. This statement is NOT being admitted for the purpose of proving any particular fact. This statement may be considered by you only [for the purpose of establishing what _____ reasonably believed on _____ (OR) for the purpose of establishing what _____'s state of mind was on _____.]

13) Battered Woman Syndrome:

The (State or Defense) is about to introduce evidence on the 'Battered Woman syndrome'. This evidence is being offered for the limited purpose of describing the 'Battered Woman Syndrome' and characteristics of the syndrome. The admission of this testimony does not mean the victim actually suffered from the syndrome or that it even exists. Those are fact questions for the jury to decide. *State v. Vance, 685 N.W.2d 713 (Minn. 2004).*

14) Testimony of Immunized Witness

The testimony of an immunized witness, someone who has been told either that [his] [her] crimes will go unpunished in return for testimony or that [his] [her] testimony will not be used against [him] [her] in return for that cooperation, must be examined and weighed by the jury with greater care than the testimony of someone who is appearing in court without the need for such an agreement with the government.

_____ may be considered to be an immunized witness in this case.

The jury must determine whether the testimony of the immunized witness has been affected by self-interest, or by the agreement [he] [she] has with the government, or by [his own] [her own] interest in the outcome of this case, or by prejudice against the defendant.

15) Testimony of Informant – Options #1 and #2

Option #1: You have heard evidence that _____ has an arrangement with the government under which he/she receives consideration in a plea agreement for providing information to the government. His/her testimony was received in evidence and may be considered by you. You may give his/her testimony such weight as you think it deserves. Whether or not his information or testimony may have been influenced by receiving consideration in a plea agreement is for you to determine.

Option #2: The testimony of an informant, someone who provides evidence against someone else for money, or to escape punishment for [his] [her] own misdeeds or crimes, or for other personal reason or advantage, must be examined and weighed by the jury with greater care than the testimony of a witness who is not so motivated.

_____ may be considered to be an informant in this case.

The jury must determine whether the informer's testimony has been affected by self-interest, or by the agreement [he] [she] has made with the government, or [his own] [her own] interest in the outcome of this case, or by prejudice against the defendant.