

STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT

STATE OF NEW HAMPSHIRE

v.

JESSE T. BROOKS

09-S-319, 08-S-579, 07-S-2885

**DEFENDANT'S PROPOSED JURY INSTRUCTIONS**

Defendant Jesse T. Brooks, by and through counsel, hereby submits the following proposed jury instructions for the Court's use in charging the jury in this case. Defendant reserves the right to supplement or amend these proposed instructions based on instructions proposed by the State, evidence admitted, and the course of trial in this matter.

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ROCKINGHAM  
SUPERIOR COURT

### Function of the Court and Jury

The evidence and arguments in this case have been completed. I will now instruct you as to the law that applies in this case. You will then retire to decide a verdict in this case.

In order to reach a fair and just verdict, you must understand and follow the law as I explain it to you. For example, you have to understand the definition of the crime that the defendant is charged with. You have to understand how convinced one way or the other you must be before you reach a verdict. You have to understand what to consider in deciding whether to believe a particular witness. These instructions will explain the law as to these and other matters so that you can reach a fair and just verdict.

It is your duty as jurors to follow all of the instructions I am about to give you. Regardless of any opinion you may have as to what the law ought to be, the law as I explain it to you is the law you must follow in reaching your verdict.

It is up to you to decide the facts in this case. You must decide the facts solely from the evidence in this trial. You must apply the law given to you in these instructions to the facts and in this way reach a fair and just verdict.

See N.H. Bar Assn., *Criminal Jury Instructions, Drafting Ctte. Version* (Jan. 2005), at 25.

Prejudice or Sympathy

Under your oath as jurors, you are not to be swayed by fear, prejudice, bias, or sympathy, either for or against the defendant, for or against the alleged victim, or for or against the State.

See Jury Instructions, State v. John Brooks, Rockingham Superior Court Nos. 08-S-580 – 8583 (Oct. 17, 2008), at 4.

### Duty to Deliberate & Unanimous Verdict Required

Now that all the evidence is in and the arguments are completed, you are free to talk about the case in the jury room. In fact, it is your duty to talk with each other about the evidence, and to make every reasonable effort you can to reach a unanimous verdict in this case.

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. Your verdict must be unanimous.

Talk with each other, listen carefully and respectfully to each other's views and keep an open mind as you listen to what your fellow jurors have to say. Try your best to work out your differences. Do not hesitate to change your mind if you are convinced that other jurors are right and that your original position was wrong.

But do not ever change your mind just because other jurors see things differently, or just to get the case over with. In the end, your vote must be exactly that -- your own vote. It is important for you to reach unanimous agreement, but only if you can do so honestly and in good conscience.

No one will be allowed to hear your discussions in the jury room, and no record will be made of what you say. So you should all feel free to speak your minds. Listen carefully to what the other jurors have to say, and then decide for yourself if the State has proved the defendant guilty beyond a reasonable doubt, based upon the law as given to you.

See N.H. Bar Assn., Criminal Jury Instructions, Drafting Ctte. Version (Jan. 2005), at 19, 22.

### Jury Recollection Controls

You have heard the lawyers discuss the facts and the law in their arguments to you. These arguments are not evidence. Their purpose is to help you understand the evidence and the law. If the lawyers have stated the law differently from the law as I explain it to you in these instructions, then you must follow these instructions and ignore the statements of the lawyers. If the lawyers have stated the evidence differently from how you recall it, then you should follow your own memory of what the evidence was.

See N.H. Bar Assn., Criminal Jury Instructions, Drafting Ctte. Version (Jan. 2005), at 30.

### Duties of Lawyers

During the trial there were objections by counsel and rulings by the Court on various matters. It is the duty of attorneys for both sides to raise objections when they believe that testimony or other evidence is being improperly admitted or excluded from trial. Therefore, you should hold no resentment towards an attorney who made an objection or towards the party which that attorney represents.

Similarly, during the course of this trial there were occasions when it was necessary for the lawyers to confer with me out of your hearing. In such situations, you should not feel slighted. You are not to speculate or muse as to what was being discussed, and likewise you should hold no resentment toward an attorney who requested permission to come to the bench or who asked that you be excused from the courtroom.

See Jury Instructions, State v. John Brooks, Rockingham Superior Court, Nos. 08-S-580 – 8583 (Oct. 17, 2008) (Lynn, C.J.), at 4.

### Evidence in the Case

During your deliberations you may consider only the evidence in the case. The evidence consists of the testimony under oath of the witnesses, exhibits which have been admitted into evidence, and stipulations of certain facts.

During the trial the lawyers made objections. The lawyers are supposed to object when they believe that certain evidence is not admissible. If I sustained an objection or excluded any evidence, you must not guess as to what the answer or evidence would have been. If I ordered that a question and answer be stricken from the record, you must not consider either the question or the answer as evidence.

A judge is required to be neutral, and I am in fact neutral in this case. If you believe that I have expressed or suggested an opinion as to the facts in my rulings, you should ignore that belief. It is up to you alone to decide the facts in this case.

In short, you should consider only the legally admissible evidence in deciding this case; that is, the testimony of the witnesses, the exhibits, and stipulations.

See N.H. Bar Assn., Criminal Jury Instructions, Drafting Ctte. Version (Jan. 2005), at 23.

### Indictments Not Evidence

The fact that the defendant has been indicted and brought to stand trial is not evidence of guilt. The indictment is simply a way of giving the defendant notice of the charges against him. It is the formal way of accusing the defendant of the crime charged in order to bring him to trial. In your deliberations, you must not consider the indictment, or the fact that the defendant has been brought to trial, as evidence of his guilt.

See N.H. Bar Assn., Criminal Jury Instructions, Drafting Ctte. Version (Jan. 2005), at 28.

## Credibility of Witnesses

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. That is, it is up to you to decide who and what to believe. If there is any conflict between the witnesses, then you must decide where the truth lies. Simply because a witness has taken an oath to tell the truth does not mean that you have to accept his or her testimony as true.

You should carefully scrutinize all of the testimony given by a witness on both direct and cross examination, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. In evaluating a witness's credibility, you should use your common sense and judgment, and consider factors you use in deciding important issues in your everyday lives. For example, in evaluating a witness's credibility, you may consider the following:

1. The witness's appearance, attitude, and behavior on the stand and the way the witness testified;
2. The witness's age, intelligence, and experience;
3. The witness's opportunity and ability to see or hear the things about which the witness testified;
4. The accuracy of the witness's memory;
5. Any motive of the witness not to tell the truth;
6. Any interest that the witness had in the outcome of the case;
7. Any bias of the witness, or friendship or animosity the witness may have for or against any of the other people in the case;
8. The consistence or inconsistency of the witness's testimony;

9. Whether or not what the witness said appears reasonable or unreasonable;
10. Whether what the witness said is consistent or inconsistent with the testimony of other witnesses, or with statements the witness made at another time.

If you believe that part of a witness's testimony is false, you may choose to distrust other parts also, but are not required to do so. Inconsistencies and contradictions within a witness's testimony or between witnesses do not necessarily mean that you should disbelieve the witness. It is possible for honest people to witness the same event and see or hear things differently. You should evaluate inconsistencies and contradictions and determine whether they are important or unimportant. You need not believe any witness even though the testimony is uncontradicted. Nor are you required to accept testimony as true simply because some or even all of the witnesses agree with each other. You may find the testimony of one witness or of a few witnesses more persuasive than the testimony of a larger number.

These principles apply to all witnesses, whether they are ordinary citizens, police officers, experts or otherwise.

After making your own evaluation of credibility, you should give the testimony of each witness such weight as you think it deserves. You may accept all of what a witness said, reject all of what a witness said, or accept some and reject some of what a witness said. In short, you should consider the testimony of each witness and give it the weight you think it deserves.

See N.H. Bar Assn., Criminal Jury Instructions, Drafting Ctte. Version (Jan. 2005), at 14.

### Accomplice Testimony

The testimony of some witnesses, however, must be considered by you with more caution than the testimony of other witnesses. In this case, you have heard testimony from Michael Benton and Joseph Vrooman, who entered into agreements with the prosecution whereby, in return for their cooperation and testimony at trial, the prosecution agreed to allow them to plead guilty to reduced charges and to obtain a more favorable disposition of the charges than they might otherwise have received.

The testimony of an alleged accomplice who has entered into an agreement with the prosecution must be scrutinized by you with great care and caution in deciding what weight, if any, the testimony should be given. In particular, you must consider whether the testimony of an accomplice has been affected by the agreement he has struck with the prosecution, by his own self-interest in the outcome of the case, or by his prejudice against the defendant. The truthfulness of the testimony of an accomplice is solely a question for the jury to decide.

The fact that Benton and Vrooman have pleaded guilty to participating in conduct related to that with which the defendant has been charged may not be considered by you as evidence of the defendant's guilt. You may consider the guilty pleas of Benton and Vrooman only in determining their credibility.

There has been evidence that the prosecution's agreements with Benton and Vrooman are conditioned on Benton and Vrooman testifying truthfully. However, the reference to truthfulness in those agreements does not mean that the prosecution has any special knowledge or is in any better position than you the jury to determine if the witness is telling the truth.

See Jury Instructions, State v. John Brooks, Rockingham Superior Court, Nos. 08-S-580 – 8583 (Oct. 17, 2008) (Lynn, C.J.), at 10-11.

### Number of Witnesses

The weight to be given to the evidence should be determined by the quality of the evidence, not the quantity. It is not the number of witnesses or quantity of evidence, but the quality of the evidence that is important.

See N.H. Bar Assn., Criminal Jury Instructions, Drafting Ctte. Version (Jan. 2005), at 38.

### Presumption of Innocence & Burden of Proof

Under our state and federal constitutions, all defendants in criminal cases are presumed to be innocent until proven guilty beyond a reasonable doubt. The burden of proving guilt is entirely upon the State. The defendant does not have to prove his innocence. The defendant enters this courtroom as an innocent person, and you must consider him to be an innocent person unless and until the State convinces you beyond a reasonable doubt that he is guilty of every element of the offense you are considering.

See Jury Instructions, State v. John Brooks, Rockingham Superior Court, Nos. 08-S-580 – 8583 (Oct. 17, 2008) (Lynn, C.J.), at 14-15; State v. Wentworth, 118 N.H. 832, 839 (1978).

### Reasonable Doubt

A “reasonable doubt” is just what the words would ordinarily imply. The use of the word “reasonable” simple means that the doubt must be reasonable rather than unreasonable; it must be a doubt based on reason. It is not a frivolous or fanciful doubt, nor is it a doubt that can easily be explained away. Rather, a reasonable doubt is such a doubt based upon reason as remains after consideration of all of the evidence that the State has offered against it. A reasonable doubt may arise either from the evidence or from a lack of evidence.

The test you must use is this: If you have a reasonable doubt as to whether the State has proved any one or more of the elements of the crime you are considering, you must find the defendant not guilty of that crime. However, if you find that the State has proved all of the elements of the crime you are considering beyond a reasonable doubt, you may find the defendant guilty of that crime.

See Jury Instructions, State v. John Brooks, Rockingham Superior Court, Nos. 08-S-580 – 8583 (Oct. 17, 2008) (Lynn, C.J.), at 14-15; State v. Wentworth, 118 N.H. 832, 839 (1978).

Consider Only Crime Charged

Remember, you are here to decide whether the State has proved beyond a reasonable doubt that the defendant in this case is guilty of the crime charged in this case. The defendant is not on trial for any act, conduct, or offense not alleged in the indictment. Neither are you concerned with the guilt of any other person or persons not on trial as a defendant in this case.

See 1A Kevin F. O'Malley et al., Federal Jury Practice and Instructions (West 2000), § 12.09 (and cases cited).

## Conspiracy to Commit Murder

The defendant is charged with the crime of conspiracy to commit murder. A conspiracy to commit an offense is a crime separate and distinct from the actual commission of the substantive offense which is the object of the conspiracy. The essence of the crime of conspiracy is an agreement to commit a crime, as distinguished from the commission of the crime itself. The definition of the crime of conspiracy, as applicable to this case, has four elements, each of which the State must prove beyond a reasonable doubt in order to find the defendant guilty of this offense. These elements are:

First, that the defendant conspired or agreed with one or more of the following individuals – John Brooks, Joseph Vrooman, Robin Knight, Michael Benton, and/or Andrew Carter – to cause the death of Jack Reid, Sr.;

Second, that the defendant made such agreement with the conscious object that Reid would be killed, that is, that the defendant specifically intended or desired that Reid be killed;

Third, that at some time during the existence or life of the conspiracy, one of its members performed at least one of the overt acts alleged in the indictment; and

Fourth, that the overt act was committed for the purpose of advancing or furthering one of the objects of the conspiracy.

A criminal conspiracy is an agreement or mutual understanding entered into by two or more people to violate the law by some joint or common plan or course of action. It is, in essence, a kind of partnership in crime. To prove the existence of a conspiracy, the State is not required to produce a written contract between the parties, nor is it required to show that there was an express oral agreement spelling out all the details of the understanding.

However, merely because a person associates with another and discusses common goals or plans is not in itself enough to make someone a member of a conspiracy. Likewise, mere similarity of conduct between or among such persons, or merely being present at the scene where a crime takes place, even with knowledge that the crime will occur, is not in itself enough to make someone a member of a conspiracy. Before you may find the defendant guilty of the crime of conspiracy charged in the indictment, the evidence in the case must establish beyond a reasonable doubt that the defendant deliberately became a part of a plan to murder Jack Reid, Sr. with the conscious object or specific intent to accomplish or further the goal or objective of the conspiracy.

In order to sustain its burden of proof, the State must also prove beyond a reasonable doubt that during the life of the conspiracy one of the members of conspiracy knowingly performed at least one of the overt acts alleged in the indictment, and that this overt act was performed for the purpose of advancing the goals of the conspiracy. The overt act need not in itself be a criminal act. But, as I said, it must be done by one of the conspirators during the course of the conspiracy and it must be done for the purpose of furthering some object or purpose of the unlawful agreement.

The indictment alleges 50 overt acts. The State only needs to prove beyond a reasonable doubt that one of the overt acts alleged in the indictment was committed. However, in order to return a guilty verdict, it is necessary that all twelve members of the jury unanimously agree as to the overt act. For example, if six jurors were to find beyond a reasonable doubt that one alleged overt act was committed, and another six agreed that it was a different overt act that was committed, that would not be sufficient for conviction. Of course, all twelve jurors may also

unanimously agree that more than one or that all of the overt acts alleged were committed, and that those overt acts were committed in furtherance of the conspiracy.

See Jury Instructions, State v. John Brooks, Rockingham Superior Court, Nos. 08-S-580 – 8583 (Oct. 17, 2008) (Lynn, C.J.), at 26-27.

### Credibility of Witnesses – Testimony of Immunized Witness

The testimony of some witnesses must be considered with more caution than the testimony of other witnesses.

In this case, you have heard from a witness who testified under a grant of immunity conferred by the State. This means that the witness could not refuse to testify based upon his/her assertion of the privilege against self-incrimination. However, nothing the witness said during his/her testimony can be used against the witness, directly or indirectly, in a prosecution of the witness for his/her own criminal conduct. This grant of what is known as "use immunity" applies only with respect to truthful testimony given by the witness. Like any other witness, an immunized witness could be subject to prosecution for perjury if it was discovered he/she knowingly gave false testimony.

The State is entitled to grant use immunity to a person in order to obtain the person's testimony, and the testimony of an immunized witness may be received in evidence, considered by you, and given such weight as you feel it deserves. Indeed, the testimony of an immunized witness may be enough in itself for conviction, if you find that it establishes the defendant's guilt beyond a reasonable doubt.

However, it also is true that the testimony of an immunized witness must be scrutinized by you with great care and caution in deciding what, if any, weight it should be given. In particular, you must determine whether the testimony of the immunized witness has been affected by self-interest, or by the agreement he/she has with the State, or by his/her own interest in the outcome of this case, or by prejudice against the defendant.

### Expert Testimony

In this case, you have heard the opinion testimony of an expert[s] witness. An expert is someone who has acquired some specialized knowledge, such as scientific or technical knowledge, from experience, training, or education that qualifies the expert to give an opinion as to matters that are not common knowledge. The opinion of the expert may assist you in understanding the evidence or in deciding a fact in issue.

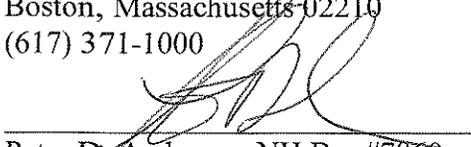
You are not bound by the opinion of an expert. You are free to ignore the expert's opinion if you find that the reasons given in support of the opinion are not sound, or if you find that other evidence outweighs the opinion.

### Mental States – Purposely

Part of the definition of the crime of conspiracy is that the defendant acted purposely. A person acts purposely when his/her conscious object is to cause a certain result/engage in certain conduct. In this case, the State must prove that the defendant had the conscious object to cause the death of Jack Reid and purposely joined a conspiracy to accomplish this result. The key words here are "conscious object." To have a "conscious object" means to have a specific intent. It means that the defendant desired to cause the death of Jack Reid and joined a conspiracy for that purpose. It is not enough for the state to prove that the defendant knew or was aware of what he/she was doing. Nor is it enough for the state to prove that the defendant created a risk of injury or harm. To prove that the defendant acted purposely requires more than that. It requires proof that the defendant specifically intended or desired to cause Jack Reid's death and joined a conspiracy for that purpose.

Respectfully submitted,  
JESSE T. BROOKS,  
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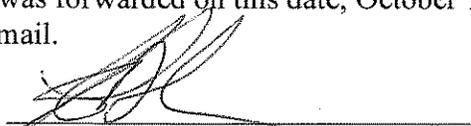
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Dated: October 1, 2009

**Certificate of Service**

I hereby certify that a copy of the foregoing was forwarded on this date, October 1, 2009, to all counsel of record by electronic mail and U.S. mail.



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Peter D. Anderson, NH Bar #7860