

COMMONWEALTH

V.

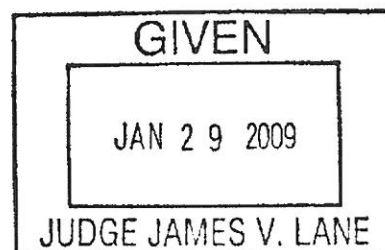
DONNA JEAN REEDY HOCKMAN

INSTRUCTION 1

The defendant is presumed to be innocent. You should not assume the defendant is guilty because the defendant is on trial. This presumption of innocence remains with the defendant throughout the trial and is enough to require you to find the defendant not guilty unless and until the Commonwealth proves each and every element of the offense beyond a reasonable doubt. This does not require proof beyond all possible doubt, nor is the Commonwealth required to disprove every conceivable circumstance of innocence. However, suspicion or probability of guilt is not enough for conviction.

There is no burden on the defendant to produce any evidence.

A reasonable doubt is a doubt based on your sound judgment after a full and impartial consideration of all the evidence in the case.



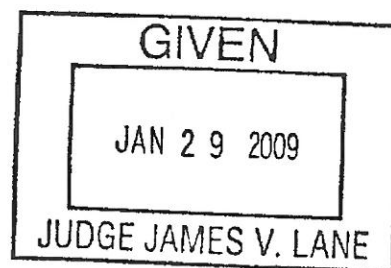
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INSTRUCTION

2



You are the judges of the facts, the credibility of the witnesses and the weight of the evidence. You may consider the appearance and manner of the witnesses on the stand, their intelligence, their opportunity for knowing the truth and for having observed the things about which they testified, their interest in the outcome of the case, their bias, and, if any have been shown, their prior inconsistent statements, or whether they have knowingly testified untruthfully as to any material fact in the case.

You may not arbitrarily disregard believable testimony of a witness. However, after you have considered all the evidence in the case, then you may accept or discard all or part of the testimony of a witness as you think proper.

You are entitled to use your common sense in judging any testimony. From these things and all the other circumstances of the case, you may determine which

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witnesses are more believable and weigh their testimony  
accordingly.

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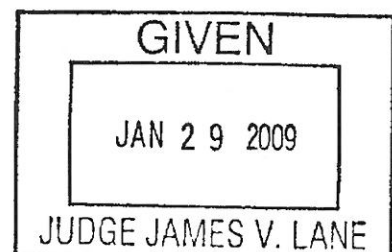
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INSTRUCTION

3

The fact that the defendant has been indicted by  
a grand jury is not evidence against the defendant and you  
should not consider it.



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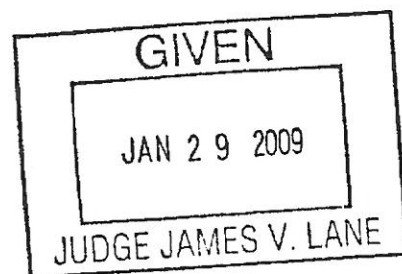
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INSTRUCTION

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You may consider evidence that the defendant committed an offense other than the offense for which the defendant is on trial only as evidence of the defendant's intent or knowledge in connection with the offense for which the defendant is on trial and for no other purpose.



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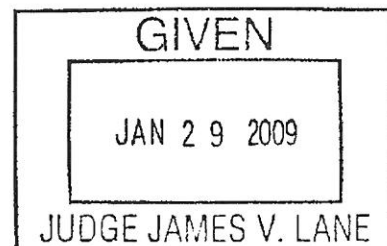
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INSTRUCTION

5

You must not consider any matter that was  
rejected or stricken by the Court. It is not evidence and  
should be disregarded.



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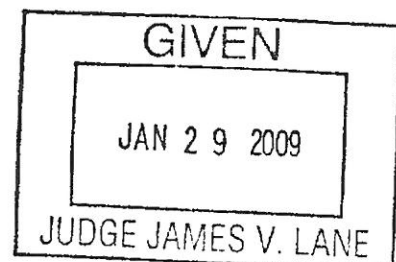
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INSTRUCTION 

It is not necessary that each element of the offense be proved by direct evidence, for it may also be proved by circumstantial evidence. You may convict the defendant on circumstantial evidence alone, or on circumstantial evidence combined with other evidence, if you believe from all the evidence that the defendant is guilty beyond a reasonable doubt.

When the Commonwealth relies upon circumstantial evidence, the circumstances proved must be consistent with guilt and inconsistent with innocence. It is not sufficient that the circumstances proved create a suspicion of guilt, however strong, or even a probability of guilt. The evidence as a whole must exclude every reasonable theory of innocence.



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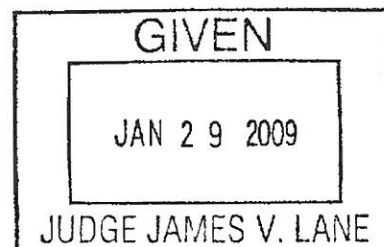
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INSTRUCTION

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You may consider proof of a witness' prior conviction of a felony or crime involving moral turpitude as affecting the witness' credibility, but it does not render the witness incompetent to testify.





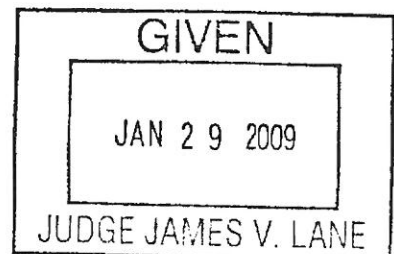
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INSTRUCTION 8

If you believe from the evidence that a witness previously made a statement inconsistent with his testimony at this trial, the only purpose for which that statement may be considered by you is its bearing on the witness' credibility. It is not evidence that what the witness previously said is true.



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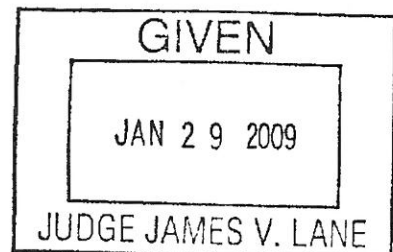
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INSTRUCTION

9

If you believe from the evidence that the defendant previously made a statement inconsistent with the defendant's testimony at this trial, that previous statement may be considered by you as proof that what the defendant previously said is true.



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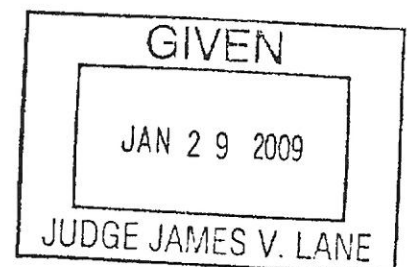
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INSTRUCTION

10

You may infer that every person intends the  
natural and probable consequences of his acts.



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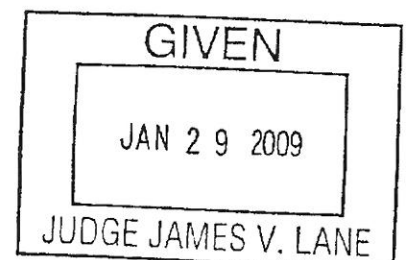
**Instruction No.** 11

The defendant is charged with the crime of using a pistol while committing or attempting to commit murder. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant used a firearm; and
- (2) That the use was while committing or attempting to commit murder.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any of the above offenses, OR that she acted in self-defense OR that she acted in defense of another, then you shall find the defendant not guilty.

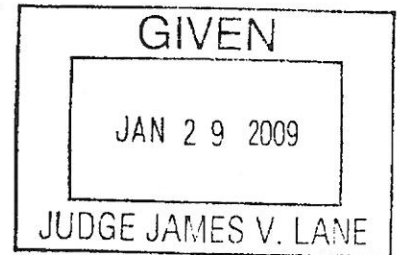


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Instruction No. 12



The defendant is charged with the crime of first degree murder. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

- (1) That the defendant killed Dustin Stanley; and
- (2) That the killing was malicious; and
- (3) That the killing was willful, deliberate and premeditated.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the crime as charged, then you shall find the defendant guilty of first degree murder but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the first two elements of the offense as charged but you do not find beyond a reasonable doubt that the killing was willful, deliberate and premeditated, then you shall find the defendant guilty of second degree murder but you shall not fix the punishment until your verdict has been returned and further evidence has been heard by you.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt that the killing was malicious but that the Commonwealth has proved beyond a reasonable doubt that the defendant killed Dustin Stanley and further:

- (1) That the killing was the result of an intentional act; and
- (2) That the killing was committed while in the heat of passion;

then you shall find the defendant guilty of voluntary manslaughter but you shall not fix the punishment until the verdict has been returned and further evidence has been heard by you.

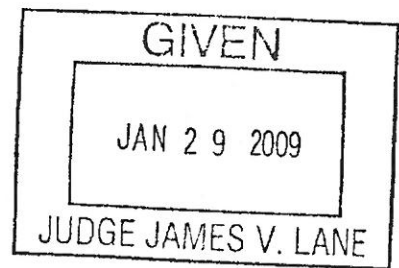
If you find that the Commonwealth has failed to prove beyond a reasonable doubt any of the above offenses, OR you find that she acted in self-defense OR you find that she acted in defense of another, then you shall find the defendant not guilty.

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INSTRUCTION <sup>13</sup>~~15~~



Malice is that state of mind which results in the intentional doing of a wrongful act to another without legal excuse or justification, at a time when the mind of the actor is under the control of reason. Malice may result from any unlawful or unjustifiable motive including anger, hatred or revenge. Malice may be inferred from any deliberate willful and cruel act against another, however sudden.

Heat of passion excludes malice when that heat of passion arises from provocation that reasonably produces an emotional state of mind such as hot blood, rage, anger, resentment, terror or fear so as to cause one to act on impulse without conscious reflection. Heat of passion must be determined from circumstances as they appeared to the defendant, but those circumstances must be such as would have aroused heat of passion in a reasonable person.

If a person acts upon reflection or deliberation, or after his passion has cooled, or there has been a

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reasonable time or opportunity for cooling, then the act is  
not attributable to heat of passion.

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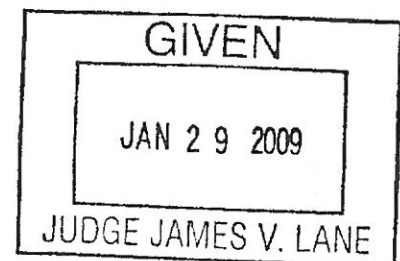
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INSTRUCTION ~~14~~ 14

You may infer malice from the deliberate use of a deadly weapon unless, from all the evidence, you have a reasonable doubt as to whether malice existed.

A "deadly weapon" is any object or instrument that is likely to cause death or great bodily injury because of the manner, and under the circumstances, in which it is used.





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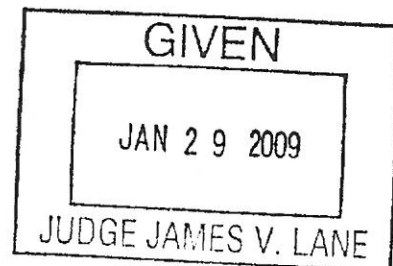
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INSTRUCTION

~~14~~ 15

Once the Commonwealth has proved there was an unlawful killing, then you are entitled to infer there was malice and that the act was murder in the second degree unless, from all the evidence, you have a reasonable doubt as to whether malice existed.



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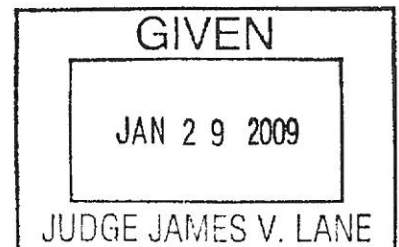
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INSTRUCTION

~~18~~ 16

'Willful, deliberate, and premeditated' means a specific intent to kill, adopted at some time before the killing, but which need not exist for any particular length of time.



**COMMONWEALTH OF VIRGINIA**

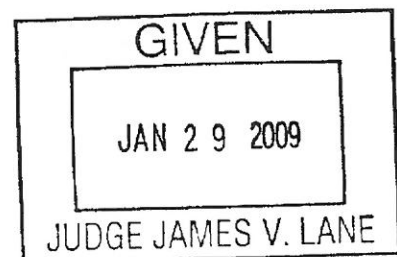
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**Instruction No.** 17

You have been instructed on more than one grade of homicide and if you have a reasonable doubt as to the grade of the offense, then you must resolve that doubt in favor of the defendant, and find her guilty of the lesser offense.

For example, if you have a reasonable doubt as to whether she is guilty of first degree murder or second degree murder, you shall find her guilty of second degree murder. If you have a reasonable doubt as to whether she is guilty of second degree murder or voluntary manslaughter, you shall find her guilty of voluntary manslaughter. If you have a reasonable doubt as to whether she is guilty at all, you shall find her not guilty.



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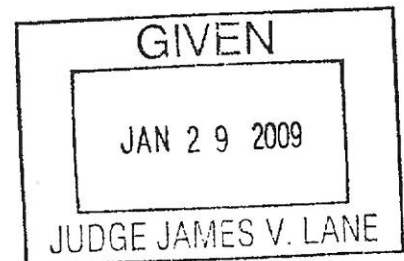
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~~20~~ 18

To prove the charge of murder the Commonwealth does not have to prove a motive for the killing. The presence or absence of a motive may be considered in arriving at your verdict.



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**Instruction No.** 19

A person who reasonable believes that another intends to attack him for the purpose of killing him or doing him serious bodily harm has a right to arm himself for his own necessary self-protection. In such a case, no inference of malice can be drawn from the fact that he armed himself.

**GIVEN**

**JAN 29 2009**

**JUDGE JAMES V. LANE**

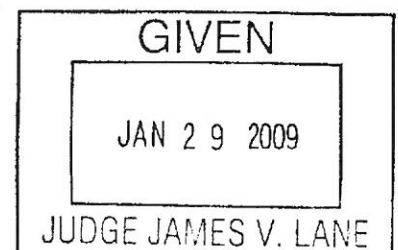
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**Instruction No.** 20

The difference between murder and manslaughter is malice. When malice is present, the killing is murder. When it is absent, the killing can be no more than manslaughter.



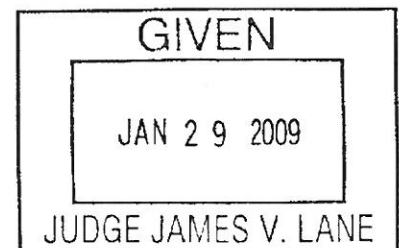
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**Instruction No.** 21

If you believe from the evidence that the defendant was without fault in provoking or bringing on the fight, and that the defendant reasonably feared, under the circumstances as they appeared to him, that the defendant was in danger of harm, then the defendant had the right to use such force as was reasonably necessary to protect herself from the threatened harm. If you further believe that the defendant used no more force that was reasonably necessary to protect herself from the threatened harm, then you shall find the defendant not guilty.



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**Instruction No.**

22

If you believe from the evidence that another person was without fault in provoking or bringing on the fight, and that the defendant reasonably feared, under the circumstances as they appeared to him, that another person was in danger of harm, then the defendant had the right to use such force as was reasonably necessary to protect that other person from the threatened harm. If you further believe that the defendant used no more force that was reasonably necessary to protect that other person from the threatened harm, then you shall find the defendant not guilty.

