

PRELIMINARY CRIMINAL INSTRUCTIONS

Preliminary Criminal 1 – Importance of Jury Service

Jury service is an important part of our system of justice, with a long and distinguished tradition in American law. From the beginning, American law has viewed the jury system as an effective means of drawing on the collective wisdom, experience, and fact-finding abilities of persons such as yourselves. While it may be an occasional inconvenience, or worse, jury service is an important responsibility for you, one, which I am sure, you will take seriously.

SOURCE: Bench Book for Superior Court Judges; Preliminary 2, RAJI (Civil) 4th.

COMMENT: Rule 21.1, Arizona Rules of Criminal Procedure: “The law relating to instructions to the jury in civil actions shall apply to criminal actions, except as otherwise provided.”

USE NOTE: The trial judge may wish to consider incorporating this instruction as the first paragraph of Preliminary Criminal 2.

Preliminary Criminal 2 – Duty of Jurors

Ladies and Gentlemen:

Now that you have been sworn, I will briefly tell you something about your duties as jurors and give you some instructions. At the end of the trial I will give you more detailed instructions, and those instructions will control your deliberations.

It will be your duty to decide the facts. You must decide the facts only from the evidence produced in court. You must not speculate or guess about any fact. You must not be influenced by sympathy or prejudice.

You will hear the evidence, decide the facts, and then apply the law I will give to you to those facts. That is how you will reach your verdict. In doing so you must follow that law whether you agree with it or not.

You must not take anything I may say or do during the trial as indicating any opinion about the facts. You, and you alone, are the judges of the facts.

SOURCE: Preliminary 1, RAJI (Civil) 4th modified.

COMMENT: Rule 21.1, Arizona Rules of Criminal Procedure: “The law relating to instructions to the jury in civil actions shall apply to criminal actions, except as otherwise provided.”

Preliminary Criminal 3 – Evidence

You will decide what the facts are from the evidence presented here in court. That evidence will consist of testimony of witnesses, any documents and other things received

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into evidence as exhibits, and any evidence stipulated to by the parties or that you are instructed to consider.

[You may hear reference to exhibits that are not admitted and are not asked to be admitted. These exhibits are not admitted as evidence, but the information from them that is testified to by witnesses is evidence that you may consider.]

You will decide the credibility of the witnesses and weight to be given to any evidence presented in the case, whether it is direct evidence or circumstantial evidence.

SOURCE: Preliminary 3, RAJI (Civil) 4th modified.

USE NOTE: Use of bracketed paragraph two is left to the discretion of the judge.

COMMENT: Rule 21.1, Arizona Rules of Criminal Procedure: “The law relating to instructions to the jury in civil actions shall apply to criminal actions, except as otherwise provided.”

Preliminary Criminal 4 – Direct and Circumstantial Evidence

Evidence may be direct or circumstantial. Direct evidence is a physical exhibit or the testimony of a witness who saw, heard, touched, smelled or otherwise actually perceived an event. Circumstantial evidence is the proof of a fact or facts from which the existence of another fact may be determined. The law makes no distinction between direct and circumstantial evidence. You must determine the weight to be given to all the evidence without regard to whether it is direct or circumstantial.

SOURCE: Preliminary 3, RAJI (Civil) 4th modified.

COMMENT: Rule 21.1, Arizona Rules of Criminal Procedure: “The law relating to instructions to the jury in civil actions shall apply to criminal actions, except as otherwise provided.”

Preliminary Criminal 5 – Stipulations

During the trial, the lawyers are permitted to stipulate that certain evidence exists. This means both sides agree that evidence exists and is to be considered by you during your deliberations at the conclusion of the trial.

SOURCE: Standard 3, RAJI (Criminal), modified.

Preliminary Criminal 6 – Evidence, Statements of Lawyers and Rulings

As I mentioned earlier, it is your job to decide from the evidence what the facts are. Here are six rules on what is and what is not evidence:

1. Evidence to be considered: You must determine the facts only from the testimony of witnesses and from exhibits admitted in evidence. Anything you may see or hear

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when the court is not in session, even if what you see or hear is done or said by one of the parties or by one of the witnesses, is not evidence and must not be considered by you. If you should hear or see anything pertaining to the case outside the courtroom or if anyone should attempt to speak to you about this case outside the courtroom, please report to me as soon as you can.

2. Lawyers' statements: Statements or arguments made by the lawyers in the case are not evidence. Their purpose is to help you understand the evidence and law.
3. Questions to a witness: A question is not evidence. A question can only be used to give meaning to a witness' answer.
4. Objections to questions: If a lawyer objects to a question and I do not allow the witness to answer, you must not try to guess what the answer might have been. You must also not try to guess the reason why the lawyer objected in the first place.
5. Rejected evidence: At times during the trial, evidence may be offered that I do not admit as evidence. When evidence is not admitted, you must not consider it for any purpose.
6. Stricken evidence: At times I may order some evidence to be stricken from the record. Then it is no longer evidence and you must not consider it for any purpose.

SOURCE: Bench Book for Superior Court Judges; Preliminary 7, RAJI (Civil) 4th modified.

COMMENT: Rule 21.1, Arizona Rules of Criminal Procedure: "The law relating to instructions to the jury in civil actions shall apply to criminal actions, except as otherwise provided."

Preliminary Criminal 7 – Rulings of the Court

Admission of evidence in court is governed by rules of law. I will apply those rules and resolve any issues that arise during the trial concerning the admission of evidence.

If an objection to a question is sustained, you must disregard the question and you must not guess what the answer to the question might have been. If an exhibit is offered into evidence and an objection to it is sustained, you must not consider that exhibit as evidence. If testimony is ordered stricken from the record, you must not consider that testimony for any purpose.

Do not concern yourselves with the reasons for my rulings on the admission of evidence. Do not regard those rulings as any indication from me of the credibility of the witnesses or the weight you should give to any evidence that has been admitted.

SOURCE: Preliminary 4, RAJI (Civil) 4th.

USE NOTE: The second paragraph may be deleted if used with Preliminary Criminal 6.

COMMENT: Rule 21.1, Arizona Rules of Criminal Procedure: "The law relating to instructions to the jury in civil actions shall apply to criminal actions, except as otherwise provided."

Preliminary Criminal 8 – Exclusion of Witnesses

The Rule of Exclusion of Witnesses is in effect and will be observed by all witnesses until the trial is over and a result announced. This means that all witnesses will remain outside the courtroom during the entire trial except when one is called to the witness stand. They will wait in the areas directed by the bailiff unless other arrangements have been made with the attorney who has called them. The rule also forbids witnesses from telling anyone but the lawyers what they will testify about or what they have testified to. If witnesses do talk to the lawyers about their testimony, other witnesses and jurors should avoid being present or overhearing.

The lawyers are directed to inform all their witnesses of these rules and to remind them of their obligations from time to time, as may be necessary. The parties and their lawyers should keep a careful lookout to prevent any potential witness from remaining in the courtroom if they accidentally enter.

SOURCE: Bench Book for Superior Court Judges; Preliminary 12, RAJI (Civil) 4th.

USE NOTE: Give this instruction only if the Rule of Exclusion of Witnesses has been invoked.

COMMENT: Rule 21.1, Arizona Rules of Criminal Procedure: “The law relating to instructions to the jury in civil actions shall apply to criminal actions, except as otherwise provided.”

Both Rule 9.3, Arizona Rules of Criminal Procedure, and Rule 615, Arizona Rules of Evidence, deal with exclusion of witnesses from the courtroom.

Preliminary Criminal 9 – Bench Conferences and Recesses

From time to time during the trial, it may become necessary for me to talk with the attorneys out of the hearing of the jury, either by having a conference at the bench when the jury is present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is not to keep relevant information from you, but to decide how certain evidence is to be treated under the rules of evidence and to avoid confusion and error. We will, of course, do what we can to keep the number and length of these conferences to a minimum. I may not always grant an attorney’s request for a conference. Do not consider my granting or denying a request for a conference as any indication of my opinion of the case or of what your verdict should be. Please do not be concerned with what we are discussing at any bench conference we may have. Please respect the privacy of those participating in the bench conference in order to maintain the fairness of the trial.

SOURCE: Ninth Circuit Manual of Model Civil Jury Instructions, Instruction 2.2, modified by addition of the last two sentences.

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Preliminary Criminal 10 – Credibility of Witnesses

In deciding the facts of this case, you should consider what testimony to accept, and what to reject. You may accept everything a witness says, or part of it, or none of it.

In evaluating testimony, you should use the tests for accuracy and truthfulness that people use in determining matters of importance in everyday life, including such factors as: the witness's ability to see or hear or know the things the witness testified to; the quality of the witness's memory; the witness's manner while testifying; whether the witness has any motive, bias, or prejudice; whether the witness is contradicted by anything the witness said or wrote before trial, or by other evidence; and the reasonableness of the witness's testimony when considered in the light of the other evidence.

Consider all of the evidence in light of reason, common sense, and experience.

SOURCE: Bench Book for Superior Court Judges; Standard 18, RAJI (Criminal) 3rd; Preliminary 5, RAJI (Civil) 4th.

COMMENT: Rule 21.1, Arizona Rules of Criminal Procedure: "The law relating to instructions to the jury in civil actions shall apply to criminal actions, except as otherwise provided."

Preliminary Criminal 11 – Expert Witness

A witness qualified as an expert by education or experience may state opinions on matters in that witness's field of expertise, and may also state reasons for those opinions.

Expert opinion testimony should be judged just as any other testimony. You are not bound by it. You may accept it or reject it, in whole or in part, and you should give it as much credibility and weight as you think it deserves, considering the witness's qualifications and experience, the reasons given for the opinions, and all the other evidence in the case.

SOURCE: Bench Book for Superior Court Judges; Standard 25, RAJI (Criminal) 3rd; Preliminary 6, RAJI (Civil) 4th.

USE NOTE: Give only if it is anticipated that an expert witness will testify.

COMMENT: Rule 21.1, Arizona Rules of Criminal Procedure: "The law relating to instructions to the jury in civil actions shall apply to criminal actions, except as otherwise provided."

Preliminary Criminal 12 – No Transcript Available to Jury; Taking Notes

At the end of the trial you will have to make your decision based on what you recall of the evidence. You will not be given a written transcript of any testimony; you should pay close attention to the testimony as it is given.

You have been provided with note pads and pens. The court encourages you to take notes during the trial if you wish to do so. Do not let note taking distract you so that you

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miss hearing or seeing other testimony. You may use your notes during your deliberations at the end of the trial. Until then, keep your notes to yourself. During recesses in the trial, you may leave your notes on your seat. Your notes are confidential and my bailiff will guard them. No one will be allowed to read your notes. Whether you take notes or not, you should rely upon your own memory of what was said and not be overly influenced by the notes of other jurors. After you have rendered your verdict, the bailiff will collect your notes and destroy them.

Do not be influenced at all by my taking notes at times. What I write down may have nothing to do with what you will be concerned with at this trial.

SOURCE: Bench Book for Superior Court Judges; Preliminary 8, RAJI (Civil) 4th modified.

USE NOTE: Rule 18.6(d), Arizona Rules of Criminal Procedure, requires the court to “instruct the jurors that they may take notes” during the trial.

COMMENT: Rule 21.1, Arizona Rules of Criminal Procedure: “The law relating to instructions to the jury in civil actions shall apply to criminal actions, except as otherwise provided.”

Preliminary Criminal 13 – Admonition

I am now going to say a few words about your conduct as jurors. I am going to give you some dos and don'ts, mostly don'ts, which I will call “The Admonition.”

Do wear your juror badge at all times in and around the courthouse so everyone will know you are on a jury.

Each of you has gained knowledge and information from the experiences you have had prior to this trial. Once this trial has begun you are to determine the facts of this case only from the evidence that is presented in this courtroom. Arizona law prohibits a juror from receiving evidence not properly admitted at trial. Therefore, do not do any research or make any investigation about the case on your own. Do not view or visit the locations where the events of the case took place. Do not consult any source such as a newspaper, a dictionary, a reference manual, television, radio or the Internet for information. If you have a question or need additional information, submit your request **in writing** and I will discuss it with the attorneys.

Do not talk to anyone about the case, or about anyone who has anything to do with it, and do not let anyone talk to you about those matters, until the trial has ended, and you have been discharged as jurors. This prohibition about not discussing the case includes using e-mail, Facebook, MySpace, Twitter, instant messaging, Blackberry messaging, I-Phones, I-Touches, Google, Yahoo, or any internet search engine, or any other form of electronic communication for any purpose whatsoever, if it relates in any way to this case. This includes, but is not limited to, blogging about the case or your experience as a juror on this case, discussing the evidence, the lawyers, the parties, the court, your deliberations, your reactions to testimony or exhibits or any aspect of the case or your courtroom experience with anyone whatsoever, until the trial has ended, and you have been discharged as jurors. Until then, you may tell people you are on a jury, and you may tell them the estimated

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schedule for the trial, but do not tell them anything else except to say that you cannot talk about the trial until it is over.

One reason for these prohibitions is because the trial process works by each side knowing exactly what evidence is being considered by you and what law you are applying to the facts you find. As I previously told you, the only evidence you are to consider in this matter is that which is introduced in the courtroom. The law that you are to apply is the law that I give you in the final instructions. This prohibits you from consulting any outside source.

If you have cell phones, laptops or other communication devices, please turn them off and do not turn them on while in the courtroom. You may use them only during breaks, so long as you do not use them to communicate about any matter having to do with the case. You are not permitted to take notes with laptops, Blackberries, tape recorders or any other electronic device. You are only permitted to take notes on the notepad provided by the court. Devices that can take pictures are prohibited and may not be used for any purpose.

It is your duty not to speak with or permit yourselves to be addressed by any person on any subject connected with the trial. If someone should try to talk to you about the case, stop him or her or walk away. If you should overhear others talking about the case, stop them or walk away. If anything like this does happen, report it to me or any member of my staff [insert phone number] as soon as you can. To avoid even the appearance of improper conduct, do not talk to any of the parties, the lawyers, the witnesses or media representatives about anything until the case is over, even if your conversation with them has nothing to do with the case. For example, you might pass an attorney in the hall, and ask what good restaurants there are downtown, and somebody from a distance may think you are talking about the case. So, again, please avoid even the appearance of improper conduct.

The lawyers and parties have been given the same instruction about not speaking with you jurors, so do not think they are being unfriendly to you. When you go home tonight and family and friends ask what the case is about, remember you cannot speak with them about the case. All you can tell them is that you are on a jury, the estimated schedule for the trial, and that you cannot talk about the case until it is over.

In a civil case, the jurors are permitted to discuss the evidence during the trial while the trial progresses. In a criminal case such as this, however, the jurors are not permitted to discuss the evidence until all the evidence has been presented and the jurors have retired to deliberate on the verdict. You may not discuss the evidence among yourselves until you retire to deliberate on your verdict. Therefore, during breaks and recesses whether you are assembled in the jury room or not, you shall not discuss any aspect of the case with each other until the case is submitted to you for your deliberations at the end of the trial. Again, if you have a question or need additional information, submit your request in writing and I will discuss it with the attorneys.

During the trial, you are not to engage in any conduct that impairs or interferes with your ability to hear and understand the court proceedings.

Do not form final opinions about any fact or about the outcome of the case until you have heard and considered all of the evidence, the closing arguments, and the rest of the instructions I will give you on the law. Keep an open mind during the trial. Form your final opinions only after you have had an opportunity to discuss the case with each other in the jury room at the end of the trial.

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Please advise me in writing immediately if you believe that any juror has violated any provision of this admonition.

Before each recess, I will not repeat the entire Admonition I have just given you. I will probably refer to it by saying, “Please remember the Admonition,” or something like that. However, even if I forget to make any reference to it, remember that the Admonition still applies at all times during the trial.

SOURCE: Bench Book for Superior Court Judges; Preliminary 9, RAJI (Civil) 4th, modified.

COMMENT: Rule 21.1, Arizona Rules of Criminal Procedure: “The law relating to instructions to the jury in civil actions shall apply to criminal actions, except as otherwise provided.”

Preliminary Criminal 14 – Media Coverage

There may or may not be news media coverage of the trial. What the news media covers is up to them. If there is media coverage, you must avoid it during the trial. If you do encounter something about this case in the news media during the trial, end your exposure to it immediately and report to me as soon as you can. If there are cameras in the courtroom during the trial, do not be concerned about them. Court rules require that the proceedings be photographed or televised in such a way that no juror can be recognized.

SOURCE: Bench Book for Superior Court Judges; Preliminary 10, RAJI (Civil) 4th.

USE NOTE: Where there is extensive media coverage about a case, the trial judge may wish to consider asking the jurors at the start of the trial each day whether any juror has seen or heard anything in the media about the case.

COMMENT: Rule 21.1, Arizona Rules of Criminal Procedure: “The law relating to instructions to the jury in civil actions shall apply to criminal actions, except as otherwise provided.”

Preliminary Criminal 15 – Questions by Jurors

If at any time during the trial you have difficulty hearing or seeing something that you should be hearing or seeing, or if you get into personal distress for any reason, raise your hand and let me know.

If you have any questions about parking, restaurants, or other matters relating to jury service, feel free to ask one of the court staff. But remember that the Admonition applies to court staff, as it does to everyone else, so do not try to discuss the case with court staff.

If you have a question about the case for a witness or for me, write it down, but do not sign it. Hand the question to the bailiff. If your question is for a witness who is about to leave the witness stand, please signal the bailiff or me before the witness leaves the stand.

The lawyers and I will discuss the question. The rules of evidence or other rules of law may prevent some questions from being asked. If the rules permit the question and the answer is available, an answer will be given at the earliest opportunity. When we do not ask a

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question, it is no reflection on the person submitting it. You should attach no significance to the failure to ask a question. I will apply the same legal standards to your questions as I do to the questions asked by the lawyers. If a particular question is not asked, please do not guess why or what the answer might have been.

SOURCE: Bench Book for Superior Court Judges; Preliminary 11, RAJI (Civil) 4th.

USE NOTE: Rule 18.6(e), Arizona Rules of Criminal Procedure, requires the court to instruct the jurors that “they are permitted to submit to the court written questions directed to witnesses or to the court.” Review of the juror questions must be done out of the presence of the jury (for example, at a bench conference) and should be done on the record.

COMMENT: Rule 21.1, Arizona Rules of Criminal Procedure: “The law relating to instructions to the jury in civil actions shall apply to criminal actions, except as otherwise provided.”

Preliminary Criminal 16 – Alternate Jurors

The law provides for a jury of _____ persons in a case such as this. We have more than _____ jurors so that, if a juror becomes ill or has a personal emergency, the trial can continue without that juror.

At the end of the case, alternate jurors will be determined by lot in a drawing held in open court. Please do not be concerned with who may or may not be chosen as an alternate at the end of the case.

SOURCE: Bench Book for Superior Court Judges; Preliminary 13, RAJI (Civil), 4th.

COMMENT: ARIZ. CONST., art. 2, § 23 and A.R.S. § 21-102(A) require a 12-person jury if the potential sentence is 30 years or more. “A defendant’s exposure to a sentence of at least thirty years’ imprisonment establishes his or her right to a twelve-person jury, notwithstanding the actual sentence imposed. *State v. Luque*, 171 Ariz. 198, 201, 829 P.2d 1244, 1247 (App.1992) (“commencement of deliberations is the crucial point” in determining when defendant’s right to twelve-person jury under article II, § 23 of Arizona Constitution attaches); *see also State v. Smith*, 197 Ariz. 333, 4 P.3d 388 (App. 1999).” *State v. Benenati*, 203 Ariz. 235, 239 n. 3, 52 P.3d 804 (App. 2002); *State v. Kuck*, 210 Ariz. 288, 110 P.3d 1022 (App. 2005) distinguishing *State v. Maldonado*, 206 Ariz. 339, 342, 78 P.3d 1060, 1063 (App. 2003) (jury size is determined at the outset of the trial) and holding that the size of the jury is determined by the maximum sentence to which the defendant is exposed when the case goes to the jury. Defense counsel’s waiver of a twelve-person jury without the defendant’s knowing waiver is fundamental error requiring reversal and a new trial. *Maldonado*, 206 Ariz. 339, 78 P.3d 1060 (App. 2003). The possible prison sentence, even if it is a mandatory consecutive sentence, in a probation violation matter is not required to be included in determining whether a twelve-person jury is required for defendant’s new, untried case. *State v. Nguyen*, 208 Ariz. 316, 318, 93 P.3d 516, 518 (App. 2004).

Preliminary Criminal 17 – Constitutional Right Not to Testify

A defendant in a criminal case has a constitutional right to not testify at trial, and the exercise of that right cannot be considered by the jury in determining whether a defendant is guilty or not guilty.

SOURCE: Standard 15, RAJI (Criminal) 3rd.

Preliminary Criminal 18 – Statements of Defendant

If there is testimony in this case about what a defendant said to a law enforcement officer, you must not consider any such statements unless you determine beyond a reasonable doubt that the defendant made the statements voluntarily.

A defendant's statement to a law enforcement officer was not voluntary if it resulted from the defendant's will being overcome by a law enforcement officer's use of any sort of violence, coercion, or threats or by any direct or implied promise, however slight.

You must give such weight to the defendant's statement as you feel it deserves under all the circumstances.

SOURCE: *See* Standard 6, RAJI (Criminal) 3rd.

USE NOTE: Give this instruction only if a statement of the defendant to law enforcement is going to be introduced by the State.

Preliminary Criminal 19 – Presumption of Innocence and Burden of Proof

The State has charged the defendant with a crime. The charge is not evidence against the defendant. You must not think the defendant is guilty just because the defendant has been charged with a crime. The defendant has pled "not guilty." The defendant's plea of "not guilty" means that the State must prove every part of the charge beyond a reasonable doubt.

The law does not require a defendant to prove innocence. Every defendant is presumed by law to be innocent.

The State has the burden of proving the defendant guilty beyond a reasonable doubt. In civil cases, it is only necessary to prove that a fact is more likely true than not or that its truth is highly probable. In criminal cases such as this, the State's proof must be more powerful than that. It must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find him/her guilty. If, on the other hand, you think there is a real possibility that he/she is not guilty, you must give him/her the benefit of the doubt and find him/her not guilty.

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In deciding whether the defendant is guilty or not guilty, do not consider the possible punishment.

SOURCE: See Standard 5a and 5b(1), RAJI (Criminal) 3rd; *State v. Portillo*, 182 Ariz. 592, 596, 898 P.2d 970, 974 (1995).

COMMENT: This instruction is to be given in every criminal case. *Portillo, supra*. The instruction should be given exactly as written without any modification. *State v. Sullivan*, 205 Ariz. 285, 288, 69 P.3d 1006, 1009 (App. 2003).

Preliminary Criminal 20 (Short Version) – Jury to Be Guided by Official English Translation/ Interpretation

[*Language to be used*] may be used during this trial. The evidence you are to consider is only that provided through the official court [interpreters] [translators]. Although some of you may know [*language to be used*], it is important that all jurors consider the same evidence. Therefore, you must consider only the English interpretation, disregarding what you heard in [insert language]. You must disregard any different meaning. You may not comment to fellow jurors on what you heard in [insert language]. Additionally, you may not reinterpret for other jurors testimony that has been interpreted by the court interpreter because that would be providing your fellow jurors with information not on the record.

SOURCE: Ninth Circuit Manual of Model Civil Jury Instructions, Instruction 1.16.

USE NOTE: Use the bracketed language as applicable to the case. “Interpreter” or “interpretation” will be used for the spoken language and “translator” or “translation” will be used for written documents.

Should there be an issue with the accuracy of the interpretation or translation, counsel should raise the issue with the trial judge.

Preliminary Criminal 20 (Long Version) – Jury to Be Guided by Official English Translation/ Interpretation

[Insert language] may be used during this trial. The evidence you are to consider is only that provided through the official court interpreters. Although some of you may know [insert language], it is important that all jurors consider the same evidence. Therefore, you must accept the English interpretation. You must disregard any different meaning.

The court interpreter is required to remain neutral and to interpret between English and [insert language] accurately and impartially to the best of the interpreter’s skill and judgment. The court interpreter is trained to give as accurate a translation as possible under the circumstances.

You must evaluate interpreted testimony as you would any other testimony. That is, you must not give interpreted testimony any greater or lesser weight than you would if the witness had spoken English.

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It is important that each juror reach a decision based on the same set of facts. The possibility that a word or phrase may have another meaning is not a topic for discussion unless it is raised by counsel and resolved by the court. Therefore, you must consider only the English interpretation, disregarding what you heard in [insert language]. You may not comment to fellow jurors on what you heard in [insert language]. Additionally, you may not retranslate for other jurors testimony that has been translated by the court interpreter because that would be providing your fellow jurors with information not on the record.

USE NOTE: “Interpreter” or “interpretation” will be used for the spoken language and “translator” or “translation” will be used for written documents.

Preliminary Criminal 20.1 – Interpreter for the Defendant

Every person is entitled to a fair trial regardless of the language a person speaks and regardless of how well a person may, or may not, use the English language. Many citizens and noncitizens have a primary language other than English. Our Constitution protects all people within our state regardless of their nationality or their proficiency with the English language. Bias against or for a person who has little or no proficiency in English, or because the speaker does not use English, is not allowed. The fact that the defendant requires an interpreter must not influence you, in your deliberations, in any way.

Preliminary Criminal 20.2 – Citizenship/Nationality Instruction

Every person is entitled to a fair trial regardless of nationality or citizenship. Our Constitution and laws protect all people within our state regardless of their nationality or citizenship. Bias against or for a person because of their nationality or citizenship is not allowed. The defendant’s nationality or citizenship must not influence you in your deliberations, in any way.

Preliminary Criminal 21 – The Charged Offense

To assist you in considering the evidence that will be presented during the trial, I will now tell you about the crime[s] with which the defendant is charged. The defendant is charged with [“insert name of crime[s]”], which crime[s] require[s] proof of the following:

[Set out the elements of the charged crime or crimes along with any definitions that may prove useful to the jury during presentation of the evidence.]

The defendant has pled “not guilty” to [this charge] [these charges]. The State must prove each element of the charged crime beyond a reasonable doubt. I will give you more details and definitions about the alleged crime in the final jury instructions.

SOURCE: Rule 18.6(c), Arizona Rules of Criminal Procedure.

COMMENT: Rule 18.6(c) provides that immediately after the jury is sworn, the court is to instruct the jury on, “the elementary legal principles that will govern the proceeding.” It is recommended that the jury be instructed on the elements of the charged crime and any basic definitions so that the jury can put the evidence in context during the trial.

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The trial is expected to last through _____. We will all do our best to move the case along, but delays frequently occur. These won't be anyone's fault, so don't hold them against the parties. Delays usually occur because the attorneys and I often need to resolve certain legal matters before these matters may be presented to you in court or because I am busy with matters in other cases.

The usual hours of trial will be from _____ to _____. We will take short recesses about every mid-morning and mid-afternoon and occasionally stretch breaks in place. We will recess at _____ and begin again at _____. Unless a different starting time is announced prior to recessing for the evening, you may assume a starting time of _____ for the next day. At the beginning of the day, please assemble in the jury room for this division. Please do not come back into the courtroom until you are called by the bailiff.

SOURCE: Bench Book for Superior Court Judges; Preliminary 15, RAJI (Civil) 4th.

COMMENT: Rule 21.1, Arizona Rules of Criminal Procedure: "The law relating to instructions to the jury in civil actions shall apply to criminal actions, except as otherwise provided."

Preliminary Criminal 23 – Order of Trial

Criminal trials generally proceed in the following order:

First, the prosecuting attorney will make an opening statement giving a preview of the case. The defendant's attorney may make an opening statement outlining the defense case immediately after the prosecutor's statement, or it may be postponed until after the State's case has been presented. What is said in opening statements is not evidence. Nor is it an argument. The purpose of an opening statement is to help you prepare for anticipated evidence.

Second, the State will present its evidence. After the State finishes the presentation of its evidence, the defendant may present evidence. If the defendant does produce evidence, the State may present additional, or rebuttal, evidence. With each witness, there is a direct examination, a cross-examination by the opposing side, and, finally, redirect examination. This usually ends the testimony of that witness.

Third, after all the evidence is in, I will read and give you copies of the final instructions, the rules of law you must follow in reaching your verdict.

[Fourth, the attorneys will make closing arguments to tell you what they think the evidence shows and how they think you should decide the case. The State has the right to open and close the argument since the State has the burden of proof. Just as in opening statements, what is said in closing arguments is not evidence.]

[Fourth, the attorneys will make closing arguments to tell you what they think the evidence shows and how they think you should decide the case. The State has the right to open the argument, but if the defendant presents an affirmative defense, the defendant may be allowed to close the argument because the defendant has the burden of proof on the

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affirmative defense. If no affirmative defense is presented, the State has the right to close the argument. Just as in opening statements, what is said in closing arguments is not evidence.]

Fifth, you will deliberate in the jury room about the evidence and rules of law in an effort to reach the verdict[s]. If you unanimously agree upon the verdict[s], [it] [they] will be read in court with you and the parties present.

Finally, you will be discharged and released from the Admonition.

The rules of law I have shared with you in the past few minutes are preliminary only. At the end of the case I will read to you and give you a copy of the final instructions of law. In deciding the case you must be guided by the final instructions.

SOURCE: Bench Book for Superior Court Judges; Rule 19.1(a), Arizona Rules of Criminal Procedure.

COMMENT: The second bracketed “fourth” paragraph is included because where the defense has the burden of proof on an affirmative defense, the trial court has the discretion to grant surrebuttal. *See State v. Moody*, 208 Ariz. 424, 468-69, ¶¶ 202-04, 94 P.3d 1119 (2004); *State v. Steelman*, 120 Ariz. 301, 319, 585 P.2d 1213, 1231 (1978). If the court has made the decision to allow surrebuttal before hearing the evidence, the court may wish to use the second bracketed “fourth” paragraph.