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SCMF-11-0000315

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

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In the Matter of the Publication and Distribution  
of the  
Hawai‘i Pattern Jury Instructions - Criminal

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**Amended<sup>1</sup>**

ORDER APPROVING

THE PUBLICATION AND DISTRIBUTION OF  
HAWAI‘I PATTERN JURY INSTRUCTIONS - CRIMINAL

(By: Recktenwald, C.J., Nakayama, McKenna, Pollack, and Wilson, JJ.)

Upon consideration of the proposed revisions to  
Criminal Jury Instruction 1.01 of the Hawai‘i Pattern Jury  
Instructions - Criminal,

IT IS HEREBY ORDERED that the revisions as presented in  
the accompanying Instruction are approved for use, effective  
immediately.

IT IS FINALLY ORDERED that this approval for  
publication and distribution is not and shall not be considered

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<sup>1</sup> The original order was filed on June 15, 2018. This amended order corrects language in the 1.01 Preliminary Instructions to the Jury, from "his or her" to "the person's".

by this court or any other court to be an approval or judgment as to the validity or correctness of the substance of any instruction.

DATED: Honolulu, Hawai'i, June 15, 2018.

/s/ Mark E.Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson



## **1.01. Preliminary Instructions to the Jury**

(To be given after clerk administers oath to jury)

Members of the jury, now that you have been selected as jurors in this case, the court will give you some preliminary instructions about this trial so that you may have a better understanding of how this trial will be conducted and your responsibilities as jurors.

It will be helpful to understand the order in which a criminal trial proceeds. First, each lawyer will have an opportunity to give you an opening statement. The defense may decide not to give an opening statement, or it may give its opening statement either before or after the prosecution presents its case. An opening statement is not evidence. Its only purpose is to give you an overview of what the lawyers expect the evidence will show.

Next, the prosecution will present its evidence. Evidence usually includes the sworn testimony of witnesses and exhibits, such as photographs or documents. After the prosecution presents its evidence, the defense may choose to present evidence but is not required to do so. If the defense presents evidence, the prosecution may then present rebuttal evidence.

After all the evidence has been presented, I will instruct you on the law you must apply in this case.

The lawyers will then make their final arguments in which they talk about what facts have been or have not been proven by the evidence. Closing arguments are not evidence. The prosecution makes its closing argument first. The defense may then give a closing argument, and the prosecutor may give a rebuttal argument.

After closing arguments, you will go to the jury room to begin your deliberations.

As the judge in this case, I have three main duties: (1) I will make sure that the court proceedings are kept orderly; (2) I will determine what evidence may be received during this trial; and (3) I will instruct you on the law that you must apply in this case.

You will be the judges of the facts. You will decide what facts have been proven by the evidence. A very important part of your job will be deciding whether a witness is truthful, whether the witness' testimony is accurate, and how much weight or importance to give to the testimony.

Let me explain to you what is and is not evidence. The evidence in this case will come from the sworn testimony of witnesses and any exhibits received into evidence. A question asked by a lawyer is not evidence. Objections made by a lawyer are not

evidence. Questions asked and responses of jurors given during voir dire are not evidence. Opening statements and closing arguments of lawyers are not evidence. In addition, testimony I have excluded or stricken is not evidence.

During the course of this trial you may hear the lawyers make objections. It is a lawyer's duty to object when he or she believes it is appropriate or necessary. Objections help the court to keep out matters that are not relevant to the issues in this trial.

I will rule on objections according to the law. When I rule on objections or motions do not be concerned with the reasons for my rulings.

If I sustain an objection to a question and do not allow it to be answered, you must not speculate about what the answer might have been, nor draw any conclusion from the question itself. An unanswered question is not evidence.

At times you may be excused from the courtroom so that the lawyers can discuss legal matters with me. Under the law, some matters must be heard outside of your presence. At other times, the lawyers may approach me at the bench and hold a whispered discussion about legal matters. This is called a bench conference. Please do not be offended by our whispering and do not guess or speculate about the reasons for having the bench conference.

During this trial, you must not discuss this case with anyone, not even your friends, co-workers, family or household members. Do not allow anyone to discuss this case with you. If anyone asks you about this case, tell that person that you cannot discuss it. Do not talk to the defendant(s), the lawyers, the witnesses or anyone else connected with this case.

Throughout the course of this trial, including recesses during the day and when you are excused at the end of each day of trial, do not share information, opinions, or anything else about this case with others, personally or in writing, or through computers, cell phone messaging, personal electronic and media devices, or other forms of wireless communications. This includes, for example, communicating about this case through e-mail, instant messaging, text messaging, posting or looking at information about this case on a blog, forum, social network site, chat room, discussion board, or using the Internet or any electronic means in any other way.

You must not discuss this case, even among yourselves, until I instruct you to begin your deliberations. During your deliberations, you may discuss the case only in the jury room, and only when all jurors are present.

You must not investigate the case in any way. This means that you must not visit any places mentioned during this trial, conduct experiments, consult any dictionaries, encyclopedias, or other reference materials.

Also, do not read, listen to, or watch anything about this case from any source, such as a television or radio broadcast, newspaper article or internet transmission. Your decision must be based only on the evidence you receive in this courtroom and the court's instructions on the law.

If you receive any information about this case from any source outside of this trial, even unintentionally, do not share that information with any other juror. If you do receive such information, or if anyone tries to influence you or any other juror, you must immediately tell the bailiff.

Keep an open mind throughout this trial. Do not make up your mind about the verdict or about any issue until after you have discussed the case with the other jurors during deliberations. Do not conclude from my rulings or from anything that I say or do during this trial that I favor one side over the other.

Each one of us has biases about or certain perceptions or stereotypes of other people. We may be aware of some of our biases, though we may not share them with others. We may not be fully aware of some of our other biases.

Our biases often affect how we act, favorably or unfavorably, toward someone. Bias can affect our thoughts, what we see, hear and remember, whom we believe or disbelieve, and how we make important decisions.

As jurors you are being asked to make very important decisions in this case. You must not let bias, prejudice, or public opinion influence your decision. You must not be biased in favor of or against any party or witness because of the person's actual or perceived race, color, ancestry, national origin, ethnicity, sex, gender, gender identity, sexual orientation, marital status, age, disability, religion, socioeconomic status, or political affiliation.

Your verdict must be based solely on the evidence presented. You must carefully evaluate the evidence and resist any urge to reach a verdict that is influenced by bias for or against any party or witness.

If you have a cell phone or other electronic device, keep it turned off while you are in the courtroom. Turned off means that the phone or other device is actually off and not in a silent or vibrating mode. After each recess, please double check to make sure your device is turned off. If someone needs to contact you in an emergency, the court can receive messages and deliver them to you without delay. The court's phone

number will be provided to you. It is important that you do not use your cell phone or other device in the courtroom during these proceedings.