

III. FINAL JURY INSTRUCTIONS

JUSTICE ROBERT J. SMITH

RE: charges against Errol Newton

A. DUTIES OF JURORS

INTRODUCTION

[1] You will soon leave this courtroom and start discussing this case in your jury room. It is time for me to tell you about the law you must follow in making your decision.

[2] When we started this case, and at different times during the trial, I told you about several rules of law that apply in general, or to some of the evidence as it was received. Those instructions still apply.

[3] Now I am going to give you some more instructions. These instructions will cover a number of topics. Consider them as a whole. Do not single out some as more important and pay less or no attention to others. All are equally important, unless I tell you otherwise.

[4] First, I will explain your duties as jurors, and tell you about the general rules of law that apply to all jury cases.

[5] Second, I will advise you of the specific rules of law that govern this case and the evidence that you have heard.

[6] Next, I will explain what Crown counsel must prove beyond a reasonable doubt to establish the guilt of the person charged, and tell you about the defences and other issues that arise on the evidence you have heard.

[7] Then, I will discuss the issues that you need to decide and review for you the evidence that relates to those issues. By doing this, I hope I can help you recall the evidence and understand how it relates to the issues that you will be asked to decide. You must always keep in mind, however, that to decide this case, you rely on what *you* remember the evidence was, *not* what counsel or I say it was.

[8] After that, I will briefly summarize the positions that counsel have put forward in their closing addresses.

[9] Finally, I will explain what verdicts you may return and how you should approach your discussion of the case in your jury room.

[10] It is important that you listen very carefully to all these instructions. I am giving them to help you make a decision, not to tell you what decision to make.

DUTIES OF JUDGE AND JURY

[1] In every criminal jury trial, there are two judges. I am one. You are the other.

[2] As judge of the law, it is my duty to preside over the trial. I decide what evidence the law permits you to hear and consider, and what procedure we will follow in the case. At the end of the evidence and addresses, it is my job to explain to you the rules of law that you must follow and apply to make your decision.

[3] As judges of the facts, your first duty is to decide what are the facts in this case. You make that decision from *all* the evidence given during the trial. There will be no more evidence. You consider nothing else. You are entitled to come to common sense conclusions based on the evidence that you accept. You must *not* speculate, however, about what evidence there might have been or permit yourselves to guess or make up theories without evidence to support them.

[4] Deciding the facts is your job, *not* mine. Our law does permit me to comment or express opinions about issues of fact. If I do that, however, you do *not* have to agree with me. You, not I, decide what happened in this case.

[5] The evidence does *not* have to answer every question raised in this case. You may think it would be an unusual case in which a jury could say: “We now know everything there is to know about this case”. You only have to decide those matters that are essential for you to say whether the crimes have been proven beyond a reasonable doubt.

[6] Your second duty is to accept all the rules of law that I tell you apply in this case. Even if you disagree with or do not understand the reasons for the law, you are required to follow what I say about it. You are not allowed to pick and choose amongst my instructions on the law. You must not consult other sources or substitute your own views.

[7] If I make a mistake about the law, justice can still be done in this case. The court reporter records everything I say. The Court of Appeal can correct my mistakes. But justice will not be done if you wrongly apply the law. Your decisions are secret. You do *not* give reasons. No one keeps a record of your discussions for the Court of Appeal to review. As a result, it is very important that you accept the law from me and follow it without question.

[8] Finally, it is your duty to apply the law that I explain to you to the facts that you find to reach your verdict.

IRRELEVANCE OF OUTSIDE INFORMATION

[1] You must disregard completely any radio, television, newspaper accounts or Internet information you have heard, seen or read about this case, or about any of the persons or places involved or mentioned in it. Those reports, and any other information about the case from outside the courtroom, are *not* evidence.

[2] It would *not* be fair to decide this case on the basis of any information *not* introduced or tested by the parties in court and made part of the evidence at trial. You, *not* the media or anyone else, are the *only* judges of the facts.

IRRELEVANCE OF PREJUDICE AND SYMPATHY

[1] You must consider the evidence and make your decision without sympathy, prejudice or fear. You must *not* be influenced by public opinion. We expect and are entitled to your impartial assessment of the evidence.

IRRELEVANCE OF PUNISHMENT

[1] Punishment has nothing to do with your task, which is to determine whether Crown counsel has proven Errol Newton guilty beyond a reasonable doubt. Punishment has no place in your discussions or in your decision. If you find Errol Newton guilty of an offence, it is my job, *not* yours, to decide what punishment is appropriate.

JURORS' APPROACH TO TASK

[1] When you go to your jury room to begin your discussions, it is very important that no one starts off by telling everybody else that he or she has already made up his or her mind and will not change it, whatever anyone else may say. That is *not* the way to decide a case.

[2] As jurors, it is your duty to talk with and listen to one another. Discuss the evidence. Put forward your own views. Listen to what others have to say. Try to reach an agreement, if you can.

[3] Each of you has to decide the case for yourself. You should only do so, however, after you have considered the evidence with your fellow jurors and applied the law that I have explained to you.

[4] During your discussions, do not hesitate to re-consider your own opinions. Change your mind, if you find that you are wrong. Do *not* give up your honest beliefs, however, just because others think differently. Do *not* change your mind only to get the case over with.

[5] Your only responsibility is to determine whether Crown counsel has proven the person charged guilty beyond a reasonable doubt. Your contribution to the administration of criminal justice is a just and proper verdict.

FURTHER INSTRUCTIONS

[1] At the end of these instructions, the lawyers may persuade me there is something else I should tell you. I may have made a mistake, or left something out. Perhaps what I have said could be stated more clearly to help you understand it better. Unless I tell you otherwise, do *not* consider any further instructions I may give you to be any more or less important than anything else I have said about the law. All the legal instructions, whenever they may be given, are part of the same package.

PROCEDURE FOR QUESTIONS

[1] If, during your discussions, you have any questions, please put them in writing and give them to the court constable who will be outside the door of your jury room. The constable will bring the questions to me. I will discuss them with the lawyers. You will then be brought back into the courtroom. Your questions will be repeated, and I will answer them to whatever extent the law allows. I will reply to your questions as quickly as I can.

[2] We ask that you put your questions in writing so that we understand exactly what it is that you want done or answered. In that way, we hope that we can be more accurate and helpful in our reply.

JUDGE’S REVIEW AND COMMENTS ON EVIDENCE

[1] It is my duty to review what I think are the important parts of the evidence, and to relate it to the issues that are yours to decide. In doing that, I may overlook evidence you think important, or mention evidence you think is insignificant. I may make a mistake about what a witness said while testifying.

[2] My references to the evidence are only to help you remember it, and to show you how it relates to the issues in this case. If my memory of the evidence is different from yours, it’s yours that counts. You find the facts and base your decision on your memory of the evidence, not mine, nor that of counsel.

[3] Our law also permits me to comment or express opinions about issues of fact. If I do that, however, you do *not* have to reach the same conclusion. You, not I, decide what happened in this case.

REQUIREMENTS FOR A VERDICT

[1] To return an effective verdict in this case requires that all of you agree on your decision. A verdict, whether of guilty or not guilty, is the unanimous opinion of the whole jury.

[2] There are times, however, when a jury is unable to reach a verdict. Jurors have the right to disagree.

[3] You should make every reasonable effort, however, to reach a verdict. Consult with one another. Express your own views. Listen to the views of others. Discuss your differences with an open mind. Try your best to decide this case.

[4] Everyone should give fair, impartial and equal consideration to all the evidence. Your goal should be to reach an agreement that matches the individual judgment of each juror. You must *not* agree, however, only for the purpose of returning a unanimous verdict.

[5] If you reach a unanimous verdict, your foreperson should record it on your verdict sheet and notify the court constable. We will come back into court to receive it. Your foreperson will tell us your verdict in the courtroom.

[6] If you cannot reach a unanimous verdict, you should notify the court constable in writing. The constable will bring me your message. I will discuss what has happened with Crown and defence counsel. We will then return to the courtroom to see what we should do next.

B. GENERAL PRINCIPLES

PRESUMPTION OF INNOCENCE

[1] Every person charged with an offence is presumed to be innocent, unless and until Crown counsel has proven his guilt beyond a reasonable doubt.

[2] The indictment on which you are trying the accused is only a formal accusation or charge. It tells the person charged, as it tells you, what specific crime Crown counsel alleges that the person charged committed. The charge is *not* evidence. It is *not* proof of guilt.

[3] The presumption of innocence means that Errol Newton started the trial with a clean slate. The presumption stays with him throughout the case, including your deliberations at the end of the trial. It is only defeated if and when Crown counsel satisfied you beyond a reasonable doubt that Errol Newton is guilty of the crimes charged.

BURDEN OF PROOF

[1] The person charged does *not* have to present evidence or prove anything in this case, in particular that he is innocent of the crimes charged.

[2] From start to finish, it is Crown counsel who must prove the persons charged guilty beyond a reasonable doubt. It is Crown counsel who must prove Errol Newton's guilt beyond a reasonable doubt, not Errol Newton who must prove his innocence. You must find Errol Newton not guilty of an offence unless Crown counsel satisfies you beyond a reasonable doubt that he is guilty of it.

REASONABLE DOUBT

[1] The phrase, "beyond a reasonable doubt", is a very important part of our criminal justice system.

[2] A reasonable doubt is *not* a far-fetched or frivolous doubt. It is *not* a doubt based on sympathy or prejudice. It is a doubt based on reason and common sense. It is a doubt that logically arises from the evidence, or the lack of evidence in support of the charge.

[3] It is *not* enough for you to believe that Errol Newton is probably or likely guilty. In those circumstances, you must find him not guilty, because Crown counsel would have failed to satisfy you of his beyond a reasonable doubt. Proof of probable or likely guilty is *not* proof of guilt beyond a reasonable doubt.

[4] You should also remember, however, that it is nearly impossible to prove anything with absolute certainty. Crown counsel is *not* required to do so. Absolute certainty is a standard of proof that is impossibly high. Proof beyond a reasonable doubt is closer to absolute certainty than to a balance of probabilities.

[5] If, at the end of the case, after considering all the evidence, you are sure that Errol Newton committed the an offence, you should find Errol Newton guilty of it, since you would have been satisfied of his guilt of that offence beyond a reasonable doubt.

[6] If, at the end of the case, based on all of the evidence or the lack of evidence in support of the charge, you are *not* sure that Errol Newton committed the an offence, you should find him not guilty of it.

ASSESSMENT OF EVIDENCE

[1] To make your decision, you should consider carefully, and with an open mind, all the evidence presented during the trial. It will be up to you to decide how much or little you will believe and rely upon the testimony of *any* witness. You may believe some, none or all of it.

[2] When you go to your jury room to consider the case, use the same common sense that you use every day in deciding whether people know what they are talking about and whether they are telling the truth. There is no magic formula for deciding how much or how little to believe of a witness' testimony or how much to rely on it in deciding this case. But here are a few questions you might keep in mind during your discussions.

[3] Did the witness seem honest? Is there any reason why the witness would not be telling the truth?

[4] Did the witness have an interest in the outcome of the case, or any reason to give evidence that is more favourable to one side than to the other?

[5] Did the witness seem able to make accurate and complete observations about the event? Did s/he have a good opportunity to do so? What were the circumstances in which the observation was made? What was the condition of the witness? Was the event itself unusual or routine?

[6] Did the witness seem to have a good memory? Does the witness have any reason to remember the things about which s/he testified? Did any inability or difficulty that the

witness had in remembering events seem genuine, or did it seem made up as an excuse to avoid answering questions?

[7] Did the witness' testimony seem reasonable and consistent as s/he gave it? Is it similar to or different from what other witnesses said about the same events? Did the witness say or do something different on an earlier occasion?

[8] Do any inconsistencies in the witness' evidence make the main points of the testimony more or less believable and reliable? Is the inconsistency about something important, or a minor detail? Does it seem like an honest mistake? Is it a deliberate lie? Is the inconsistency because the witness said something different, or because s/he failed to mention something? Is there any explanation for it? Does the explanation make sense?

[9] What was the witness' manner when s/he testified? How did s/he appear to you? Do not jump to conclusions, however, based entirely on how a witness has testified. Looks can be deceiving. Giving evidence in a trial is *not* a common experience for many witnesses. People react and appear differently. Witnesses come from different backgrounds. They have different abilities, values and life experiences. There are simply too many variables to make the manner in which a witness testifies the only or most important factor in your decision.

[10] These are only some of the factors that you might keep in mind when you go to your jury room to make your decision. These factors might help you decide how much or little you will believe of and rely upon a witness' evidence. You may consider other factors as well.

[11] In making your decision, do *not* consider only the testimony of the witnesses. Take into account, as well, any exhibits that have been filed. Decide how much or little you will rely on them, as well as the testimony and any admissions, to help you decide this case.

NUMBERS OF WITNESSES

[1] How much or little you rely on the evidence of the witnesses does *not* necessarily depend on the number of witnesses who testify, one way or another.

[2] Your duty is to consider *all* the evidence. You may decide that the testimony of fewer witnesses is more reliable than the evidence of a larger number. It is up to you to decide.

[3] Your task is to consider carefully the testimony of each witness. Decide how much or little you believe of what each witness has said. Do not decide the case simply by counting witnesses.

TESTIMONY OF ACCUSED (THE *W. (D.)* INSTRUCTION)

[1] If you believe Errol Newton's evidence that he did *not* commit the offences charged, you must find him *not* guilty.

[2] Even if you do *not* believe Errol Newton's evidence, if it leaves you with a reasonable doubt about his guilt, or, about an essential element of an offence charged, you must find not guilty of that offence.

[3] Even if Errol Newton's evidence does *not* leave you with a reasonable doubt of his guilt, or, about an essential element of an offence charged, you may convict him only if the rest of the evidence that you do accept proves his guilt beyond a reasonable doubt.

C. PRINCIPLES OF EVIDENCE

1. TYPES OF EVIDENCE

EVIDENCE DEFINED

[1] To decide what the facts are in this case, you must consider *only* the evidence that you saw and heard in the courtroom. Consider all the evidence in reaching your decision.

[2] The evidence includes what each witness said in answering the questions the lawyers asked. The questions themselves are *not* evidence unless the witness agreed that what was asked was correct. The answers of the witness are his/her evidence.

[3] The evidence also includes any things that were made exhibits. When you go to your jury room to decide this case, the exhibits will go with you. You may, but do not have to examine them there. Whether, how and how much you do so, is up to you. Consider them along with the rest of the evidence and in exactly the same way.

[4] The evidence also includes the facts on which the parties have agreed. You must take what they have agreed on as facts in this case.

In this case the parties agree on the following fact:

Constable Matthew Russell arrested Mr. Newton on Tuesday, November 25, 2008 and Mr. Newton had no marks on his body which may have suggested he was in a struggle earlier. Mr. Newton was arrested at around 8 p.m. on the same date.

[5] As I explained to you earlier, there are some things that are *not* evidence. You must *not* consider or rely upon them to decide this case.

[6] The *charges* that you heard read out when we started this case are *not* evidence. What the lawyers and I said when we spoke to you during the trial, including what I am saying to you now, is *not* evidence. Only the exhibits and the things witnesses say are evidence.

[7] Sometimes during the trial, one of the lawyers objected to a question that another asked a witness. Anything the lawyers said in making or answering the objection is *not*

evidence. You must also take nothing from the fact that objection was taken, or that you were excluded when I made a decision about the objection.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

[1] Some of you may have heard the terms “direct evidence” and “circumstantial evidence”. You may believe or rely upon either one as much or as little as the other in deciding this case.

[2] Sometimes witnesses tell us what they personally saw or heard. For example, a witness might say that he/she saw it raining outside. That is called *direct evidence*.

[3] Often, however, witnesses say things from which you are asked to draw certain conclusions. For example, a witness might say that he or she had seen someone enter the courthouse lobby wearing a raincoat and carrying an umbrella, both dripping wet. If you believed that witness, you might conclude that it was raining outside, even though the evidence was indirect. Indirect evidence is sometimes called *circumstantial evidence*.

[4] Like witnesses, things filed as exhibits may provide direct or circumstantial evidence.

[5] In making your decision, both kinds of evidence count. The law treats both equally. Neither is necessarily better or worse than the other. In each case, your job is to decide what conclusions you will reach based upon the evidence as a whole, both direct and circumstantial. To make your decision, use your common sense and experience.

EXHIBITS

[1] Several exhibits have been presented during this trial. They are part of the evidence. You may rely upon them, like any other evidence, as much or as little as you think fit when you decide this case.

[2] The exhibits go with you to your jury room. You may, but do not have to, examine them there. Whether you do so, how, and how much, is up to you.

[3] The exhibits are only part of the evidence. Consider them along with the rest of the evidence, and in exactly the same way.

2. RULES OF EVIDENCE

PRIOR INCONSISTENT STATEMENTS OF BELINDA

[1] When a witness says one thing in the witness box, but has said something you find to be different on an earlier occasion, your common sense tells you that the fact that the witness has given different versions may be important in deciding whether or how much you believe of or rely upon the witness' testimony.

The first thing for you to decide is whether Belinda in fact, gave an earlier and different version from her testimony of the same events.

-Belinda testified at trial that she had returned to her home at around 10:00 a.m. on Nov. 25th because she returned to pick up more cleaning rags but in her earlier statement to police she told the officer she had returned to pick up her vacuum cleaner

-Belinda testified at trial that the A had wrapped the belt around her neck and tightened until she passed out. The rapid response ambulance attendant, Mr.Stocks, who arrived first on the scene and saw her for about 2 minutes, made a note that she had not lost consciousness. The other ambulance attendant, Mr Martins, also made a note that there had been no loss of consciousness. He had no independent recollection of whether he asked her if she had passed out. Belinda testified she didn't know what loss of consciousness meant.

If you do *not* find that she gave an earlier and different version of events, please ignore what I am going to tell you about how you can use that version to help you decide this case.

If you find that the witness gave an earlier version of events and you find that earlier version of events was different than her testimony, please listen carefully to what I tell you about how to use that version to help you decide this case.

[2] Not every difference or omission will be important. You should consider the fact, nature and extent of any differences in deciding their importance to you in deciding whether you believe or will rely upon the witness' testimony. You should also consider any explanation the witness gives for the differences.

[3] Whatever you choose to make of the differences, you can only use the testimony given under oath in this trial as evidence of what actually happened. You cannot use the earlier statement as evidence of what actually happened, unless you are satisfied the witness accepted it as true while in the witness box.

[4] Even then, like the evidence of any witness, it is for you to say whether or how much you will believe of, or rely upon it in reaching your decision.

PRIOR INCONSISTENT STATEMENT OF THE ACCUSED

[1] Like any witness, a person charged may also be cross-examined about what he said before to other persons, including police officers, on any subject about which he testified here. The fact that a person charged has previously said something different from what he testified here is one of many factors for you to consider when you decide how much or little you will believe or rely upon the evidence of in deciding this case.

-the A testified at trial that he went out of his residence around his neighbourhood between Nov. 19th and his arrest, but previously gave a statement to Det Grozelle that he had not left his residence between Nov. 19 and his arrest. He offered the explanation that for him “going out” meant taking the bus.

[2] It is for you to say whether there is any difference between what the A said before, and what he testified here on the same subject. It is also up to you to decide how much or little any difference affects your belief and reliance upon the evidence of the A in deciding this case. Consider the nature and extent of the differences between the earlier and current versions, and any explanation offered for them by the A. Take into account, as well, whether the differences relates to a matter of importance, or a minor detail. Use your good common sense.

[3] Unlike any other witness, however, you may also consider what the person charged said before as evidence of what actually happened, even though the person charged does *not* testify that what he said before was true. It is for you to say how much or little you will believe and rely upon what the person charged said before as evidence of what actually happened.

MOTIVE

[1] Motive is a *reason* why somebody does something. It is *not* one of the essential elements that Crown counsel must prove. It is just part of the evidence – one of many things for you to consider as you determine whether Errol Newton is guilty.

[2] A person may be found guilty of an offence whatever his motive, or even without a motive. Absence of proven motive however, is a circumstance for you to consider – one which, you may find, tends to support the presumption of innocence. A person may also be found *not* guilty of an offence, even with a motive to commit it.

[3] In this case, Crown counsel relies on the fact that legal papers were served on the A on Nov. 19, 2008 in which Belinda claimed custody of Cameron and submits that this made the accused angry and gave him a motive to commit the offences charged. It is for you to decide whether Errol Newton had such a motive, or any motive at all, and how much or little you will rely on it to help you decide this case.

3. SPECIAL INSTRUCTIONS

USE OF JUROR NOTES DURING DELIBERATIONS

[1] When we began this trial, I told you that you could take notes to help you remember what any witness said in testifying here. Some of you have done so. You may take your notes with you to the jury room for your use during your deliberations.

[2] Your notes are *not* evidence, any more than the notes that I make or the lawyers make are evidence. The only purpose for which *you* may use *your* notes during your

deliberations is to help *you* remember what a witness said or showed, for example, on an exhibit.

[3] It is also important to remember that the notes are those of the note-taker, *not* someone else. They may or may not coincide with other jurors' memories of the evidence.

[4] A jury's decision is a group decision. Everyone has a say, an equal say. We depend on the memory and judgment of each one of you to decide this case. Do *not* simply defer to the person who is or seems to be the best note-taker. Notes don't make decisions: jurors do.

D. MODES OF PARTICIPATION

SINGLE ACCUSED CHARGED WITH MULTIPLE COUNTS

[1] The indictment on which you are trying Errol Newton alleges that he committed a number of offences that you heard read out when the A was arraigned. Each allegation is a separate charge. You must make a separate decision and give a separate verdict for each charge. The verdicts may, but do not have to be the same on each charge.

[2] You must make your decision on each charge *only* on the basis of the *evidence* that relates to that charge, and the legal *principles* that I tell you apply to your decision on that charge. You *must not* use evidence that relates *only* to one charge in making your decision on any *other* charge.

[3] Errol Newton is presumed innocent of each charge. You must consider each charge separately, and return a separate verdict for each charge based *only* on the evidence and the legal principles that apply to it. Your verdicts on each charge may, but do not have to be the same. They may be the same. Or they may be different. In each case, the verdict will depend on your assessment of the evidence and application of the legal principles that relate to *that* charge. Your verdict sheet shows the verdicts available on each charge. I will tell you about its use later in my instructions.

E. OFFENCES and POSITIONS

POSITION OF THE DEFENCE

POSITION OF THE CROWN

The Crown's position is that :

The charges of Threatening death, Assault, Assault with a weapon, Aggravated Assault and of Break and enter are made out on the evidence of the complainant, Ms. Newton-Comeau:

On November 19, 2008, the accused threatened via text message to kill Belinda Newton-Comeau.

About a week later, on November 25, 2008, the accused forced his way into Ms. Newton-Comeau's residence, pushing her as she entered her home. The accused hit Ms. Newton-Comeau's head against the wall and chased her inside her house. Ms. Newton-Comeau made her way to the second floor but was assaulted again by the accused, who then pulled her down the stairs. The Accused then hit Ms. Newton-Comeau across her body with a belt, then choking her with the same belt.

The injuries observed by the friend Tania Satura, by Officer Tenant, by the paramedics and by doctor Nordin corroborate the complainant's version of events. While not all witnesses made the same observations, when all their evidence is taken together it is consistent with the assaults described by the complainant.

It is the Crown's position that the charge of assault is made out by the evidence that the Accused struck Ms. Newton-Comeau, in this case striking her on numerous occasions. The charge of break and enter has been made out on the evidence that the Accused forced his way into her home and committed the offences of assault on Ms. Newton-Comeau. The charge of assault with

a weapon is made out on the evidence that in assaulting Ms. Newton-Comeau the Accused struck her with a belt and further choked her with the same belt. The charge of aggravated assault is made out on the evidence that the Accused in assaulting Ms. Newton-Comeau choked her sufficiently that it endangered her life.

It is the Crown's position that the evidence establishes a clear motive for the Accused's threats and assaultive behaviour: out of anger towards Ms Newton-Comeau, having been served with legal custody documents, the accused threatened her and assaulted her.

THREATENING DEATH

Count#1

[1] Errol Newton is charged with threatening to kill Belinda Newton-Comeau. The formal charge reads:

(Read applicable parts of indictment or count)

DENIAL OF CONDUCT ALLEGED

[2] The real issue in this case is whether the events alleged to form the basis of the crimes charged ever took place.

[3] It is for Crown counsel to prove beyond a reasonable doubt that the events alleged in fact occurred and that *Errol Newton* was the person involved in them. It is *not* for the accused to prove that these events never happened. If you have a reasonable doubt whether the events alleged ever took place, you must find the accused *not* guilty.

[4] You do *not* decide whether something happened simply by comparing one version of events with another, and choosing one of them. You have to consider all the evidence and decide whether you have been satisfied beyond a reasonable doubt that the events that form the basis of the crimes charged in fact took place.

[5] For you to find Errol Newton guilty of threatening, Crown counsel must prove *each* of these essential elements beyond a reasonable doubt:

- i. that Errol Newton made a *threat*;
- ii. that the threat was to cause death to *Belinda Newton-Comeau*; and
- iii. that Errol Newton made the threat *knowingly*.

If Crown counsel has *not* satisfied you beyond a reasonable doubt of *each* of these essential elements, you must find Errol Newton *not* guilty of threatening.

If you *are* satisfied beyond a reasonable doubt of *each* of these essential elements, you must find Errol Newton *guilty* of threatening.

[6] Each essential element may be made into a question for you to consider carefully and answer.

[7] **Did Errol Newton make a *threat*?**

A threat may be spoken, written, or communicated in some other way. It may be direct (for example, “I am going to kill you”). Or, it may be conditional (for example, “If you don’t give me a thousand dollars, I am going to kill you”).

What is important is the meaning that a *reasonable* person, in all the circumstances, would give to the words used. Words spoken or written in jest, or in such a way that they could *not* be taken seriously by a *reasonable* person in the circumstances, are *not* a threat.

To decide whether the words used amount to a threat, consider them from the point of view of a *reasonable* person. Take into account:

- the *circumstances* in which the words were used
- the *manner* in which the words were communicated
- the *person* to whom they were addressed
- the nature of any prior or existing relationship between the parties.

Use your good common sense.

A threat may be made by speaking, writing, or in some other manner making it known or causing someone to receive it. A person who is the subject of the threat does *not* have to be aware of it, or put in fear by it.

Belinda testified that the A sent her a text message on Nov. 19th 2008 in which he stated that he wanted to take the kids from her or kidnap her kids and that he would kill her

-the A has denied sending the text message and denied ever threatening to cause death to Belinda

-no evidence of a copy of this text message was entered in evidence

-Belinda testified that she showed a copy of the text messages to Beth Moscardie who worked at the CAS, and in cross-examination said she was pretty sure she had shown her the text messages.

-Ms Moscardie testified that she has no recollection of seeing the threatening text messages or threatening e-mails and would have noted the exact wording of the threatening texts if she had seen them. She was advised by Belinda that the A was giving her threatening messages, but was not advised that the A had threatened to kill her.

-Ms Moscardie spoke to Ms Moir about the threatening messages and Cameron's school was advised not to let the A pick up Cameron.

-Ms Moir was advised the Belinda had received threatening text messages that the A would take Cameron from his school. She never saw a copy of the threatening texts or e-mails and had no notation of a death threat having been made. She did notify the school not to let the A pick up Cameron

-Ms Moir also testified that the A called her on Nov. 19th, 2008 to report that Dana Deans, Belinda's former boyfriend, had been charged with possession of a gun

If you are *not* satisfied beyond a reasonable that Errol Newton made a threat, you must find Errol Newton *not* guilty of threatening. Your deliberations would be over on this count.

If you *are* satisfied beyond a reasonable doubt that Errol Newton made a threat, you must go on to the next question.

[8] **Was the threat to cause death to Belinda Newton-Comeau?**

A threat to cause *death* to another person is a threat to kill her.

To decide whether the words used amount to a threat to cause death, consider them from the point of a *reasonable* person in the same circumstances. Take into account:

- the *circumstances* in which the words were used
- the *manner* in which the words were communicated
- the *person* to whom the words were communicated
- the nature of any prior or existing relationship between the parties.

Use your good common sense.

Belinda testified that the A threatened to kill her in the text message sent to her on Nov. 19, 2008

-the A has denied sending the text message and denied ever threatening to cause death to Belinda

- the A gave his cell phone to the police and no copy of a text message threatening to kill Belinda was found on his cell phone.

-no text message from the A threatening to kill Belinda was found on Belinda's cell phone when the police examined it on Nov. 25th or 26th.

-neither the CAS workers or any police officer saw a text message where the A threatened to kill Belinda

If you are *not* satisfied beyond a reasonable doubt that the threat made was to cause death to Belinda NewtonComeau, you must find Errol Newton *not* guilty of threatening. Your deliberations would be over on this count.

If you *are* satisfied beyond a reasonable doubt that the threat made was to cause death to Belinda NewtonComeau, you must go on to the next question.

[9] **Did Errol Newton make the threat *knowingly*?**

“Knowingly” means that Errol Newton uttered the words as a threat, intended that they be taken seriously, and meant to intimidate Belinda NewtonComeau or cause Belinda NewtonComeau to be afraid.

Crown counsel does *not* have to prove that Errol Newton intended that the words be passed along to Belinda NewtonComeau or that Belinda NewtonComeau was *actually* threatened or made afraid by them. It does *not* matter whether Errol Newton meant to carry out the threat.

To decide whether Errol Newton made the threats *knowingly*, you should take into account

- the *words* used
- the *context* in which the words were used
- Errol Newton’s *mental state* at the time the words were used.

Use your good common sense.

-Belinda testified that the A threatened to kill her in a text message sent to her on Nov.19, 2008 shortly after he was served with court papers for Cameron, who was in the care of the Children’s Aid Society. She was seeking a return of Cameron to her custody

-Belinda testified that she felt scared and was very upset when she received the text message from the A

-the A has denied sending the text message and denied ever threatening to cause death to Belinda

If you are *not* satisfied beyond a reasonable doubt that Errol Newton uttered the threat *knowingly*, you must find Errol Newton *not* guilty.

If you *are* satisfied beyond a reasonable doubt that Errol Newton uttered the threat *knowingly*, you must find Errol Newton guilty of threatening.

[10] Please record your decision on the verdict sheet provided for you.

Count #2

ASSAULT

[1] Errol Newton is charged with assault. The formal charge reads:

(Read applicable parts of indictment or count)

DENIAL OF CONDUCT ALLEGED

[2] The real issue in this case is whether the events alleged to form the basis of the crimes charged ever took place.

[3] It is for Crown counsel to prove beyond a reasonable doubt that the events alleged in fact occurred and that *Errol Newton* was the person involved in them. It is *not* for the accused to prove that these events never happened. If you have a reasonable doubt whether the events alleged ever took place, you must find the accused *not* guilty.

[4] You do *not* decide whether something happened simply by comparing one version of events with another, and choosing one of them. You have to consider all the evidence

and decide whether you have been satisfied beyond a reasonable doubt that the events that form the basis of the crimes charged in fact took place.

[5] For you to find Errol Newton guilty of assault, Crown counsel must prove *each* of these essential elements beyond a reasonable doubt:

- i. that Errol Newton *intentionally* applied force to Belinda Newton-Comeau;
- ii. that Belinda NewtonComeau did *not* consent to the force that Errol Newton *intentionally* applied; and
- iii. that Errol Newton *knew* that Belinda NewtonComeau did *not* consent to the force that he *intentionally* applied.

If Crown counsel has *not* satisfied you beyond a reasonable doubt of *each* of these essential elements, you must find Errol Newton *not* guilty of assault.

If Crown counsel *has* satisfied you beyond a reasonable doubt of *each* of these essential elements, you must find Errol Newton *guilty* of assault.

If you find that the Crown has proven element i) beyond a reasonable doubt the Crown and defence agree that elements ii) and iii) above are also proven beyond a reasonable doubt.

[6] The first essential element may be made into a question for you to consider carefully and answer.

[7] **i) Did Errol Newton *intentionally* apply force to Belinda NewtonComeau?**

The application of force may be *direct*, for example, by Errol Newton using a part of his body, such as a hand or foot, or *indirect*, for example, by Errol Newton using an object, such as a belt.

The force applied may be violent, or even gentle. To be an assault, however, Errol Newton must apply the force *intentionally* and against Belinda NewtonComeau's will. An *accidental* touching is *not* an intentional application of force.

The word "intentionally" refers to Errol Newton's state of mind when he applies the force. "Intentionally" means "on purpose", in other words, *not* by accident. To decide whether Errol Newton applied force *intentionally*, you will have to consider *all* the circumstances surrounding the application of force. Take into account the *nature* of the contact and any words or gestures that may have accompanied it including any alleged threats, along with anything else that indicates Errol Newton's attitude or state of mind at the time he applied force to Belinda NewtonComeau.

Belinda testified as follows:

- that the A had threatened to kill her about a week previously and she also saw him walking back and forth between the units where she lived earlier in the morning, around 10:00 a.m., on November 25, 2008 when she returned to pick up cleaning rags

-that she believe the A was not happy with her because she went to visit her aunt in New Brunswick with the children and he had to rearrange his access visit and he had recently been served with papers where she sought the return of Cameron to her custody

-that later on November 25, 2008 around 12:45-1:00 p.m., the A pushed her into the house from behind when she was entering her home and entered without her permission.

-that she ran upstairs to try to lock herself in the bathroom to call the authorities but the A grabbed by her hair and hit her head against the wall at least once.

-the A then pulled her downstairs on her stomach by her lower legs or ankles into the living room where he hit her with his hand on her back and knocked her wind out. He then hit her several times with her belt on her back.

-Belinda did not mention being grabbed by the hair, having her head hit against the wall and being dragged downstairs to Officer Tennant, or the ambulance attendants but did mention this to Dr. Nordin the next day.

-Belinda identified bruises on her body in the photographs filed as exhibit #4 which she said were caused from being struck by either the belt or the A's hand

-that she did not have any of the injuries shown on the photos before Nov. 25, 2008

-that the A put the belt around her neck and pulled it tight so she could not breathe and held it until she passed out.

-Her friend Tanya testified she observed red marks on Belinda's neck when she drove her back to her residence in her van

-Officer Tennant, the lead officer at the scene, also made notes of observing red marks on Belinda's neck when she interviewed her at the scene. She also observed several welts on Belinda's lower back which were about 2" wide, consistent with having been struck with the belt

-Neither ambulance attendant noted any red marks on Belinda's Neck, but didn't recall if she was wearing a coat. Mr. Martins did notice a welt on Belinda's lower back

-that when she came to she couldn't speak and drove over to her friend Tanya's home. Tanya was her friend and babysitter for her children

-she was dizzy and had a sore throat when she got out of her car

-she told Tanya that Errol had hit her

-she didn't call police but spoke to her boyfriend Gabe and her mother; her mother called the police

-she returned to her house with Tanya who checked the house out to make sure the A had left

-she observed a coffee table was turned over in the living room and a chair was knocked over in the kitchen

-her neck hurt, it was red as and it was hard to swallow or talk

-her throat hurt for the longest time

-she left the A in 2005 because he became very unhappy and angry and was emotionally and physically abusive to her

-the children remained with A for the first 6 months after separation and then she obtained legal custody through the Courts

-the children are still involved with the Children's Aid Society, she has custody and the A has supervised access

-her recollection was that it was not snowing on Nov. 25th, 2008 which is the same as Officer Tennant's and Officer Glenn, but Tanya and the ambulance attendant Mr.Storks recollect that it was snowing.

-she admitted that she made a mistake when she initially told the police that she had returned to her residence on the morning of Nov. 25 to pick up her vacuum cleaner while at trial she said it was to pick up more cleaning rags

-she testified that she went to see a doctor at the Appletree Medical Clinic on Nov. 25th or the next day but there is no record of her attending the Appletree Clinic. The

evidence of Dr. Nordin confirms that in fact she saw him on Nov.26, 2008 and she was mistaken about attending the Appletree Clinic but had seen her own Doctor instead.

-she testified that she was pretty sure that she told the Dr. Nordin that she was choked unconscious but there is no note of this in Dr. Nordin's notes

Tanya Satura testified as follows:

-that on Nov 25, 2008 Belinda came to her home and she looked scattered, shaken, odd and unsteady, couldn't speak

-that she observed red marks under Belinda's chin

-Belinda initially told her that someone had attacked her and then while driving in the van to Belinda's house she told her that Errol had attacked her. She believed Errol was Belinda's ex but she didn't know him.

-she went back to Belinda's house and checked it out to make sure the A wasn't still there

-when she entered Belinda's house she only noticed the postman's footsteps in the snow on the walkway. She found this odd because she testified it had been snowing.

-she observed pots and pans on the floor and chairs overturned in the kitchen and coffeetable overturned and magazines on the floor in the living room. She did not observe any wet bootmarks on the floor of Belinda's residence

Officer Tennant testified:

- That she arrived on the scene at 2:25 on Nov. 25th and was the lead officer
- She noted that the left side of Belinda's face was red and swollen
- She also noticed redness on the side of Belinda's neck with a round welt consistent with a mark left from twisting a belt
- She gave her opinion that they were not self inflicted
- She also observed welts about 2" wide on Belinda's back , which were raised about ¼ of an inch, consistent with her having been struck with a belt
- -she observed these marks both in the ambulance and in her residence
- She observed that Belinda was very upset nervous and distraught
- She saw pots and pans scattered on the kitchen floor, chairs were knocked down in the kitchen and in the living room she observed the coffee table was knocked over
- She did not seize the belt at that time
- Belinda did not mention to her that part of the struggle had occurred upstairs and she did not check upstairs
- She didn't check or see the text message with the alleged death threat as she didn't know if the threat was made verbally or by text message
- She recollects that the weather was clear and sunny and she was wearing her fleece

Officer Glenn was the back up officer at the scene who did not make notes of any injuries but had not interviewed Belinda. She didn't recall observing footprints on the walkway to Belinda's residence

You heard evidence that Belinda made statements describing how she was assaulted by the A to a number of individuals, including her friend Tanya, Officer Tennant, and Dr. Nordin shortly after the alleged assault occurred. Her statements are admitted as part of the narrative and for the fact that she made those statements to those individuals at that time, but they are not to be used as evidence of the truth of whether the A actually attacked Belinda in the manner she described.

Errol Newton testified as follows:

-he denies ever threatening to kill Belinda and denies that he ever applied any force to Belinda on November 25th and testified that he was never at Belinda's home on November 25, 2008.

-he testified that he did not know where Belinda lived, but he admitted that he had been driven with Belinda's father to her home but he testified he didn't leave the vehicle and he didn't look where she lived.

-he testified that he was frustrated but not angry at Belinda when he was served with the court papers on Nov. 19th

-he admitted that he called the CAS on Nov. 19th and reported that Belinda's former boyfriend had been arrested for having possession of a gun. Tha CAS was already aware of the allegation. He denied he was trying to payback

If you are *not* satisfied beyond a reasonable doubt that Errol Newton *intentionally* applied force to Belinda NewtonComeau, you must find Errol Newton *not* guilty on Count #2.

If you *are* satisfied beyond a reasonable doubt that Errol Newton *intentionally* applied force to Belinda NewtonComeau, you must find Errol guilty on Count #2.

Count #3

ASSAULT WITH A WEAPON

[1] Errol Newton is charged with assault with a weapon. The formal charge reads:

(Read applicable parts of indictment or count)

DENIAL OF CONDUCT ALLEGED

[2] The real issue in this case is whether the events alleged to form the basis of the crimes charged ever took place.

[3] It is for Crown counsel to prove beyond a reasonable doubt that the events alleged in fact occurred and that *Errol Newton* was the person involved in them. It is *not* for the accused to prove that these events never happened. If you have a reasonable doubt whether the events alleged ever took place, you must find the accused *not* guilty.

[4] You do *not* decide whether something happened simply by comparing one version of events with another, and choosing one of them. You have to consider all the evidence and decide whether you have been satisfied beyond a reasonable doubt that the events that form the basis of the crimes charged in fact took place.

[5] For you to find Errol Newton guilty of assault with a weapon, Crown counsel must prove *each* of these essential elements beyond a reasonable doubt:

- i. that Errol Newton *intentionally* applied force to Belinda Newton-Comeau;
- ii. that *Belinda NewtonComeau*, did *not* consent to the force that Errol Newton applied;
- iii. that Errol Newton *knew* that *Belinda NewtonComeau* did *not* consent to the force that Errol Newton applied; and
- iv. that a *weapon* was involved in Errol Newton's assault of *Belinda NewtonComeau*.

If Crown counsel has *not* satisfied you beyond a reasonable doubt of *each* of these essential elements, you must find Errol Newton *not* guilty of assault with a weapon.

If Crown counsel *has* satisfied you beyond a reasonable doubt of *each* of these essential elements, you must find Errol Newton *guilty* of assault with a weapon.

[6] Each essential element may be made into a question for you to consider carefully and answer.

[7] **i) Did Errol Newton *intentionally* apply force to Belinda NewtonComeau?**

Your answer to this question will be the same as your answer to question [7] i) above under Count #2 and you should consider the same evidence outlined under Count #2 above in reaching your decision.

If you are *not* satisfied beyond a reasonable doubt that Errol Newton *intentionally* applied force to *Belinda NewtonComeau*, you must find Errol Newton *not* guilty of Count #3.

If you are satisfied beyond a reasonable doubt that Errol Newton *intentionally* applied force to *Belinda NewtonComeau* then the Crown and defence agree that elements ii) and iii) above are also proven beyond a reasonable doubt, and you should go on to the next question related to element iv).

[8] **iv) Was a weapon involved in Errol Newton's assault of Belinda NewtonComeau?**

If you have been satisfied beyond a reasonable doubt that,

- Errol Newton (*intentionally*) applied force to Belinda NewtonComeau;
- Belinda NewtonComeau did *not* consent to the force Errol Newton (*intentionally*) applied; (agreed by Crown and Defence) and

- Errol Newton *knew* that Belinda NewtonComeau did *not* consent to the force that Errol Newton (*intentionally*) applied; (agreed by Crown and Defence)

you have found that *Errol Newton* assaulted *Belinda NewtonComeau* and you would have found him guilty of Count #2. The last question for you to consider on Count 3# is whether a weapon was involved in that assault.

A “weapon” is anything, any object that *could* be or is used to injure, kill, threaten or intimidate another person, whether it was designed or made for that purpose or not. It includes a firearm, as well as anything that Errol Newton used or intended to use as a weapon.

A weapon is *involved* in an assault if Errol Newton used or threatened to use it in intentionally applying force to *Belinda NewtonComeau*. You do *not* all have to agree on how the weapon was involved as long as each of you is satisfied beyond a reasonable doubt that the assault involved a weapon in one of the ways I have described for you.

-Belinda testified that the A hit her on her back with her belt, which is an exhibit in this trial. She also testified that the bruising as shown in the photographs was caused by the A.

-Belinda also testified that the A wrapped the belt around her neck and tightened until she passed out

Officer Tennant observed that the left side of Belinda's face was red and swollen, she also observed redness on the right side of Belinda's neck and a round welt on her neck consistent with twisting a belt. Tanya also observed a red mark on Belinda's neck

Officer Tennant also observed 2' wide welts on her back consistent with being struck with a belt

-she observed Belinda was upset nervous and distraught

-the ambulance attendant, Mr. Martins, observed a welt on Belinda's lower back and the other attendant observed a swelling on Belinda's right cheek

-Dr. Nordin, Belinda's family doctor, testified that he saw Belinda at his office on Nov. 26th at 4:00 p.m.

-she described how she was assaulted

- she complained of dizziness and nausea, Dr. Nordin was mistaken in his understanding that the assault had occurred some 3 hours earlier on the same day.

-on Nov. 26th he did not observe any neck injuries, any injury to her head, or observe any bruises; he was surprised he didn't see more evidence of injuries and some bruising given her description of the assault

-Dr. Nordin saw Belinda again on Dec 3, 2008 and made 7 notes of bruises which were consistent with the photographs of the injuries

-he agreed that the bruises he observed could be consistent with being dragged downstairs

-he also agreed that it was possible that the bruising showed up later after he saw Belinda on Nov.26th, but he was still surprised he didn't see something the day after the assault

The A denied that he ever assaulted Belinda in any manner and denies striking her with a belt.

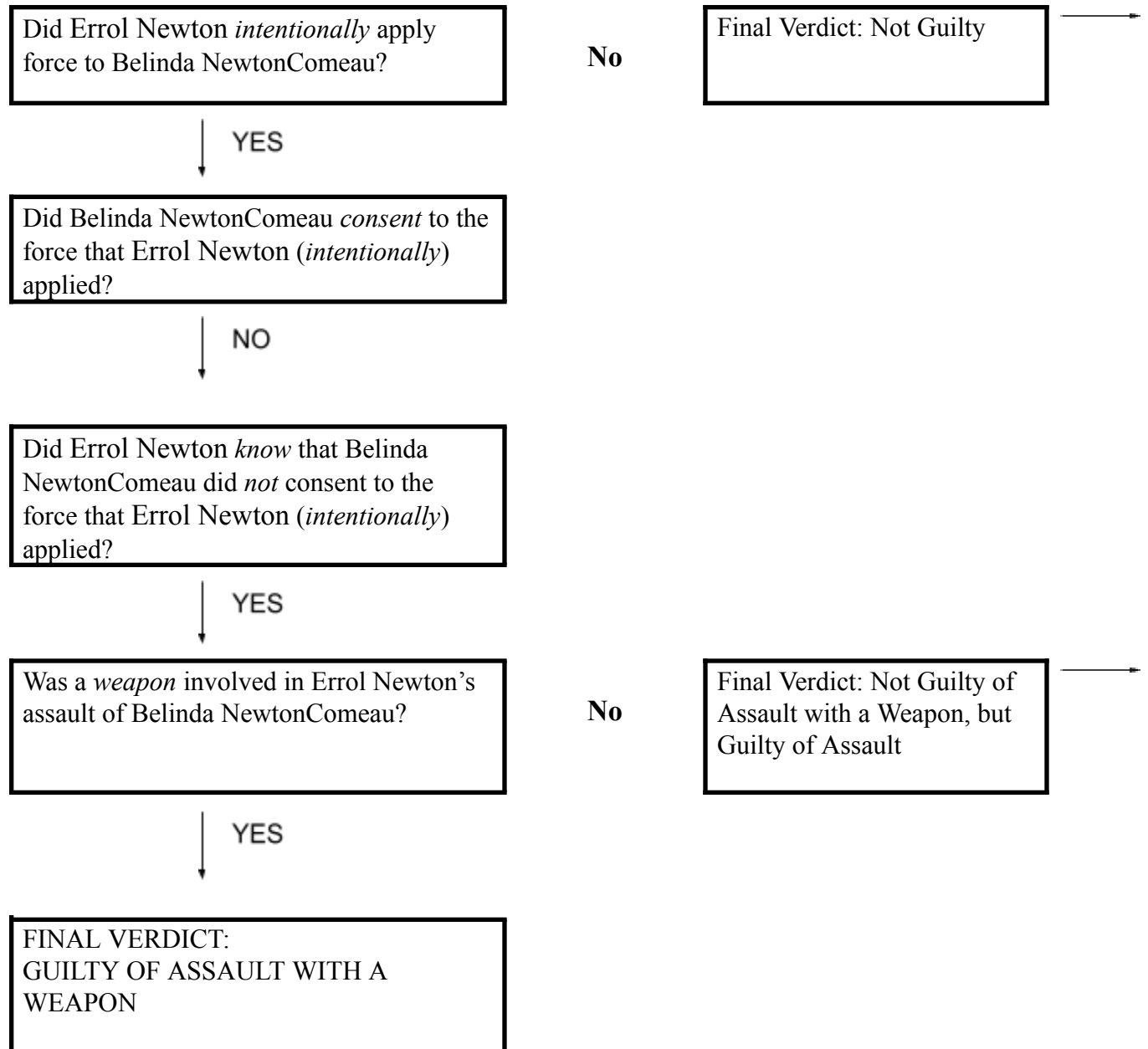
If you are *not* satisfied beyond a reasonable doubt that Errol Newton's assault of *Belinda NewtonComeau* involved a weapon, you must find Errol Newton *not* guilty of assault with a weapon, but guilty of assault.

If you *are* satisfied beyond a reasonable doubt Errol Newton's assault of *Belinda NewtonComeau* involved a weapon, you must find Errol Newton *guilty* of assault with a weapon.

[8] I have enclosed a decision tree to assist you with your decision.

[9] Please record your decision on the verdict sheet provided for you.

DECISION TREE ASSAULT WITH A WEAPON



Count #4

AGGRAVATED ASSAULT

[1] Errol Newton is charged with aggravated assault. The formal charge reads:

(Read applicable parts of indictment or count)

DENIAL OF CONDUCT ALLEGED

[2] The real issue in this case is whether the events alleged to form the basis of the crimes charged ever took place.

[3] It is for Crown counsel to prove beyond a reasonable doubt that the events alleged in fact occurred and that *Errol Newton* was the person involved in them. It is *not* for the accused to prove that these events never happened. If you have a reasonable doubt whether the events alleged ever took place, you must find the accused *not* guilty.

[4] You do *not* decide whether something happened simply by comparing one version of events with another, and choosing one of them. You have to consider all the evidence and decide whether you have been satisfied beyond a reasonable doubt that the events that form the basis of the crimes charged in fact took place.

[5] For you to find Errol Newton guilty of aggravated assault, Crown counsel must prove *each* of these essential elements beyond a reasonable doubt:

- i. that Errol Newton intentionally applied force to Belinda Newton-Comeau;
and
- ii. that the force Errol Newton applied endangered the life of Belinda NewtonComeau.

If Crown counsel has *not* satisfied you beyond a reasonable doubt of *each* of these essential elements, you must find Errol Newton *not* guilty of aggravated assault. Whether your verdict will be that Errol Newton is *not* guilty of aggravated assault, but guilty of some other offence included in that charge will depend on the specific findings you make about what Crown counsel has and has *not* proven about the offence charged.

If Crown counsel *has* satisfied you beyond a reasonable doubt of *each* of these essential elements, you must find Errol Newton guilty of aggravated assault.

[6] Each essential element may be made into a question for you to consider carefully and answer.

[7] Did Errol Newton *intentionally* apply force to Belinda NewtonComeau?

Your answer to this question will be the same as your answer to question [7] i) above under Count #2 and you should consider the same evidence outlined under Count #2 above in reaching your decision.

If you are *not* satisfied beyond a reasonable doubt that Errol Newton *intentionally* applied force to *Belinda NewtonComeau*, you must find Errol Newton *not* guilty on Count #4.

If you *are* satisfied beyond a reasonable doubt that Errol Newton *intentionally* applied force to Belinda NewtonComeau, you must go on to the next question.

[8] Did the force Errol Newton *intentionally* applied endanger the life of Belinda NewtonComeau?

To “endanger the life” of another person is to put her in a situation or condition that could cause that person to die.

Crown counsel must prove beyond a reasonable doubt that the endangering of the life of Belinda NewtonComeau resulted from the force that Errol Newton *intentionally* applied.

Crown counsel does *not* have to prove beyond a reasonable doubt that Errol Newton meant to endanger the life of Belinda NewtonComeau when he *intentionally* applied force to her. What Crown counsel does have to prove, however, is that a *reasonable* person, in the circumstances, would inevitably realize that the force Errol Newton applied would put Belinda NewtonComeau at risk of suffering some kind of bodily harm, although not necessarily serious bodily harm or the precise kind of harm that Belinda NewtonComeau suffered here. “Bodily harm” is *any* kind of hurt or injury that interferes with another person’s health or comfort. It has to be something that is more than just brief or fleeting, or minor in nature.

- Belinda testified that the A wrapped her belt around her neck and tightened it until she was unable to breathe and until she passed out.
- the A testified that he never wrapped a belt around Belinda’s neck or tightened it it until she could not breathe and lost consciousness.
- you should consider all of the evidence, including that of Officer Tennant, and Tanya who observed red marks on Belinda’s neck shortly after the alleged assault and consider

the evidence that the ambulance attendants did not notice any injury to Belinda's neck and noted no loss of consciousness. You should also consider the evidence of Dr Nordin

If you are *not* satisfied beyond a reasonable doubt that the force Errol Newton *intentionally* applied endangered the life of Belinda NewtonComeau , you must find him not guilty of Count #4.

If you *are* satisfied beyond a reasonable doubt that the force Errol Newton *intentionally* applied endangered the life of Belinda NewtonComeau , then you must find Errol Newton guilty of aggravated assault. Your deliberations on this count would be over.

[9] Please record your decision on the verdict sheet provided for you.

Count #5

**UNLAWFULLY ENTERING A DWELLING-HOUSE WITH
INTENT**

[1] Errol Newton is charged with entering a dwelling-house without lawful excuse with intent to commit an indictable offence. The formal charge reads:

(Read applicable parts of indictment or count)

DENIAL OF CONDUCT ALLEGED

[2] The real issue in this case is whether the events alleged to form the basis of the crimes charged ever took place.

[3] It is for Crown counsel to prove beyond a reasonable doubt that the events alleged in fact occurred and that *Errol Newton* was the person involved in them. It is *not* for the accused to prove that these events never happened. If you have a reasonable doubt whether the events alleged ever took place, you must find the accused *not* guilty.

[4] You do *not* decide whether something happened simply by comparing one version of events with another, and choosing one of them. You have to consider all the evidence

and decide whether you have been satisfied beyond a reasonable doubt that the events that form the basis of the crimes charged in fact took place.

[5] For you to find Errol Newton guilty of entering a dwelling-house without lawful excuse with intent to commit an indictable offence, Crown counsel must prove *each* of these essential elements beyond a reasonable doubt:

- i. that Errol Newton *entered* a dwelling-house without lawful excuse; and
- ii. that Errol Newton *intended* to commit an indictable offence *when* he entered the dwelling-house.

If Crown counsel has *not* satisfied you beyond a reasonable doubt of *each* of these essential elements, you must find Errol Newton *not* guilty of entering a dwelling-house without lawful excuse with intent to commit an indictable offence.

If Crown counsel *has* satisfied you beyond a reasonable doubt of *each* of these essential elements, you must find Errol Newton *guilty* of unlawfully entering a dwelling-house with intent to commit an indictable offence.

[6] Each essential element may be made into a question for you to consider carefully and answer.

[7] **Did Errol Newton *enter* a dwelling-house without lawful excuse?**

A dwelling-house is a building or unit where people live, and includes a mobile home or trailer that is being used as a residence, even if only temporarily.

- Belinda testified that she lived at 121 Ritchie St. Unit 3 and so this unit would be a dwelling house.

To “enter a dwelling-house” means to go into it. It does *not* matter whether Errol Newton got his entire body inside. If Errol Newton got any part of his body, that is enough to count as an entry.

Without lawful excuse means that the person who entered a dwelling house did not have permission to enter the dwelling-house from someone having authority to give such permission. In this case that would be without Belinda’s permission.

-Belinda testified that when she was entering her dwelling the A pushed her from behind and forced his way into her residence

- she testified that she did not give the accused permission to enter her residence;
- she also testified that the A grabbed her by the hair and hit her head into the wall upstairs and then dragged her down the stairs by her ankles while she was on her stomach and then struck her on her back with both his hand and with her belt;
- she also testified that the A wrapped her belt around her neck and tightened until she could not breathe and she passed out;

- the A denied that he entered Belinda's dwelling-house on November 25, 2008 and denied assaulting Belinda

If you are *not* satisfied beyond a reasonable doubt that Errol Newton *entered* a dwelling-house without lawful excuse, you must find Errol Newton *not* guilty of Count #5. Your deliberations would be over on this Count.

If you *are* satisfied beyond a reasonable doubt that Errol Newton *entered* a dwelling-house, namely Belinda Newton-Comeau's residence without lawful excuse, you must go on to the next question.

[6] **Did Errol Newton *intend to commit* an indictable offence when he entered a dwelling house?**

This element relates to Errol Newton's state of mind when he entered Belinda's dwelling-house. To determine Errol Newton's state of mind, what he intended to do, you should consider

- *what* he *did* or did not do;
- *how* he *did* or did not do it; and
- *what* he *said* or did not say.

You should look at Errol Newton's words and conduct, *before*, at the *time* and *after* he entered the dwelling-house. All these things, and the circumstances in which they happened, may shed light on Errol Newton's state of mind at the time. They may help you decide what he *intended* or did not intend to do in the dwelling-house.

In reaching your decision about whether Errol Newton *intended* to commit an indictable offence when he entered the dwelling-house, you are entitled to conclude from the fact that Errol Newton entered the dwelling-house, in the absence of evidence to the contrary, that he did so with *intent* to commit an indictable offence.

An indictable offence is a serious offence and would include committing an assault.

It is *not* up to Errol Newton to prove that he did *not* enter with *intent* to commit an indictable offence in the dwelling-house when he entered it. It is for Crown counsel to satisfy you beyond a reasonable doubt that Errol Newton entered *with* the *intent* that I have described.

The indictable offence that Errol Newton is alleged to have intended to commit is an assault on Belinda.

You have heard the evidence of the alleged assault and I have outlined it earlier in this charge in regard to Count #2.

If you are *not* satisfied beyond a reasonable doubt that Errol Newton *intended* to *commit* an indictable offence in the dwelling-house that he entered without lawful excuse, you must find Errol Newton *not* guilty of Count #5.

If you *are* satisfied beyond a reasonable doubt that Errol Newton *intended* to *commit* an indictable offence, namely to assault Belinda in the dwelling -house that he entered without lawful excuse, you *must* find Errol Newton *guilty* of Count #5.

[7] Please record your decision on the verdict sheet provided for you.

F. CONCLUDING INSTRUCTIONS

USE OF VERDICT SHEET

[1] Included in the things that will go with you to the jury room is a verdict sheet. On this sheet, I have listed the verdicts that you may reach in this case. There is *no* significance to the order in which the verdicts are listed.

[2] If you reach a verdict, your foreperson should place a check mark in the box opposite the verdict you have reached. There is a place at the bottom of the sheet for the foreperson to sign.

VERDICT SHEET

Her Majesty the Queen

Against

Errol Newton

Check [✓] applicable verdict

Count #1

Not Guilty of uttering a death threat []

Guilty of uttering a death threat []

Count #2

Not Guilty of assault []

Guilty of assault []

Count #3

Not Guilty of assault with a weapon []

Guilty of assault with a weapon []

Count #4

Not Guilty of aggravated assault []

Guilty of aggravated assault []

Count #5

Not Guilty of unlawful entry of a dwellinghouse []

Guilty of unlawful entry of a dwellinghouse []

USE OF DECISION TREE

[1] The written material prepared to help you during your deliberations includes a decision tree. There are several rectangles and arrows pointing in different directions on this document. Some rectangles contain questions, others show verdicts or give directions. The words “Yes” and “No” are printed above or beside the arrows.

[2] Each question has to do with an essential element of a crime charged. The questions are in the same words, and in the same order as they were in the instructions I gave you earlier.

[4] To answer a question, any question, you must consider:

- the principles of law that govern your decision on that question, as I have explained them to you; and
- all the *evidence* that relates to the question.

RETURN OF VERDICT

[1] If you reach a verdict, please tell the court constable that you have made your decision. We will reconvene court and bring you back into the courtroom to hear your decision.

[2] Your foreperson, should bring the verdict sheet into court with him or her when we reconvene. It is the foreperson's responsibility to announce your verdict in the courtroom, and turn over to me the completed verdict sheet. You do *not* give reasons for your decision.

JUROR CONDUCT DURING DELIBERATIONS

[1] As I previously mentioned when you go to your jury room, your duty is to consult with each other and to deliberate with a view to reaching a just verdict. Your verdict must be based on the *facts* as you find them from all the evidence introduced at trial, and on the *law* that I have told you applies in this case.

[2] You will have several things provided for you during your deliberations. Anything that has been made an exhibit during the trial will be sent to the jury room for you to examine to the extent and in the manner you may wish to do so.

[3] If you approach your deliberations calmly, putting forward your own views and listening carefully to what others have to say, you will be able to reach a just and proper verdict.

[4] It is the responsibility of the foreperson to act as the chair of the meeting, to guide the deliberations along, to prevent them from becoming protracted or descending into unnecessary repetition of matters already decided. Be firm in your leadership, but be fair to everyone.

REQUIREMENTS FOR VERDICT

[1] For there to be a verdict in this case, it is necessary for all twelve jurors to agree about the decision. In other words, a verdict, whether of not guilty or guilty, expresses the unanimous opinion of the jury.

[2] Sometimes jurors are unable to reach a verdict. Under our law, jurors have the right to disagree. No jury, however, will ever be in any better or different position to decide this case than you are now.

QUESTIONS DURING DELIBERATIONS

[1] If there is anything in these instructions about which you are not clear, I will be available to answer your questions. If you have a question, please have your foreperson, put it in writing in a sealed envelope and give it to the court constable.

[2] After I have received your question, I will discuss the answer to it with the lawyers in your absence. After that, you will be brought back into the courtroom, and your question read out followed by my answer. I will answer every proper question you have, as quickly and completely as I can.

FINAL REMARKS

[1] You have taken an oath, or made a solemn affirmation, to well and truly try this case and to render a true verdict according to the evidence. If you honour that oath or affirmation, as I am sure you will, you will have done everything that is expected of you as jurors in this trial. We ask for nothing more. We expect and are entitled to nothing less.

[2] Mr. Registrar, would you please swear or affirm the constables.