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APPENDIX C

INVOLUNTARY CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS

§§ 394.910–394.930, Fla. Stat.

QUALIFICATIONS INSTRUCTION

Many of you have electronic devices such as cell phones, smartphones, tablets, and laptop computers, and other electronic devices. Even though you have not yet been selected as a juror, there are some strict rules that you must follow about using your cell phones, electronic devices and computers.

When you are called to a courtroom, the judge will give you specific instructions on the use of electronic devices. These rules are so important that the judge may tell you that you must turn off your cell phone or other electronic devices completely or that you cannot have your cell phone or electronic devices in the courtroom. If someone needs to contact you in case of an emergency, the judge will provide you with a phone number where you can receive messages.

If the trial judge allows you to keep your cell phones, computers, or other electronic devices, you cannot use them to take photographs, video recordings, or audio recordings of the proceedings in the courtroom or your fellow jurors. You must not use any device them to search the Internet or to find out anything related to any cases in the courthouse.

Why is this restriction imposed? This restriction is imposed because jurors must decide the case without distraction and only on the evidence presented in the courtroom. I know that, for some of you, these restrictions affect your normal daily activities and may require a change in the way you are used to communicating and perhaps even in the way you are used to learning.

If you investigate, research, or make inquiries on your own, the trial judge has no way to make sure that the information you obtain is proper for the case. The parties likewise have no opportunity to dispute or challenge the accuracy of what you find. Any independent investigation by a juror unfairly and improperly prevents the parties from having that opportunity our judicial system promises.

Between now and when you have been discharged from jury duty by the judge, you must not provide or receivediscuss any information about your

jury service ~~to~~with anyone, including friends, co-workers, and family members. You may tell those who need to know where you are that you have been called for jury duty. If you are picked for a jury, you may tell people that you have been picked for a jury and how long the case may take. However, you must not give anyone any information about the case itself or the people involved in the case. You must also warn people not to try to say anything to you or write to you about your jury service or the case. This includes face-to-face, phone or computer communications.

~~In this age of electronic communication,~~ I want to stress that you must not use electronic devices or computers to talk about this case, including tweeting, texting, blogging, e-mailing, posting information on a website or chat room, or any other means at all. Do not send or accept any messages, including e-mail and text messages, about your jury service. You must not disclose your thoughts about your jury service or ask for advice on how to decide any case.

~~After you are called to the courtroom, the judge will give you specific instructions about these matters. A~~The judge will tell you when you are released from this instruction. Remember, these rules are designed to guarantee a fair trial. It is important that you understand the rules as well as the impact on our system of justice if you fail to follow them. If it is determined that any one of you has violated this rule, and conducted any type of independent research or investigation, it may result in a mistrial. A mistrial would require the case to be tried again at great expense to the parties and the judicial system. The judge may also impose a penalty upon any juror who violates this instruction. All of us are depending on you to follow these rules, so that there will be a fair and lawful resolution of every case.

NOTE ON USE

This instruction should be given in addition to and at the conclusion of the instructions normally given to the prospective jurors. The portion of this instruction dealing with communication with others and outside research may need to be modified to include other specified means of communication or research as technology develops.

This instruction was adopted in 2012 [95 So. 3d 868] and amended in 2014.

1.001 INTRODUCTION

To be given when jurors are in courtroom, prior to voir dire.

In order to have a fair and lawful trial, there are rules that all jurors must follow. A basic rule is that jurors must decide the case only on the evidence presented in the courtroom. You must not communicate with anyone, including friends and family members, about this case, the people and places involved, or your jury service. You must not disclose your thoughts about this case or ask for advice on how to decide this case.

I want to stress that this rule means you must not use electronic devices or ~~computers~~cell phones to communicate about this case, including tweeting, texting, blogging, e-mailing, posting information on a website or chat room, or any other means at all. Do not send or accept any messages to or from anyone about this case or your jury service. In addition, your cell phone or electronic device must be turned completely off while you are in the courtroom.

You must not do any research or look up words, names, [maps], or anything else that may have anything to do with this case. This includes reading newspapers, watching television or using a computer, cell phone, the Internet, any electronic device, or any other means at all, to get information related to this case or the people and places involved in this case. This applies whether you are in the courthouse, at home, or anywhere else.

All of us are depending on you to follow these rules, so that there will be a fair and lawful resolution to this case. Unlike questions that you may be allowed to ask in court, which will be answered in court in the presence of the judge and the parties, if you investigate, research or make inquiries on your own outside of the courtroom, the trial judge has no way to assure they are proper and relevant to the case. The parties likewise have no opportunity to dispute the accuracy of what you find or to provide rebuttal evidence to it. That is contrary to our judicial system, which assures every party the right to ask questions about and rebut the evidence being considered against it and to present argument with respect to that evidence. Non-court inquiries and investigations unfairly and improperly prevent the parties from having that opportunity our judicial system promises. If you become aware of any violation of these instructions or any other instruction I give in this case, you must tell me by giving a note to the [court deputy] [bailiff].

Comment

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1.01 PRELIMINARY INSTRUCTION

Responsibility of jury and judge.

You have now been sworn as the jury to try this case. This is a civil case filed by the petitioner, the State of Florida, against the respondent (respondent's name). The State alleges the respondent is a sexually violent predator and should be confined in a secure facility for long-term control, care, and treatment. By your verdict, you will decide the disputed issues of fact. I will decide the questions of law that arise during the trial, and before you retire to deliberate at the close of the trial, I will instruct you on the law that you are to follow and apply in reaching your verdict. In other words, it is your responsibility to determine the facts and to apply the law to those facts. Thus, the function of the jury and the function of the judge are well defined, and they do not overlap. This is one of the fundamental principles of our system of justice.

Steps in trial.

Before proceeding further, it will be helpful for you to understand how a trial is conducted. In a few moments, the attorneys for the parties will have an opportunity to make opening statements, in which they may explain to you the issues in the case and summarize the facts that they expect the evidence will show. Following the opening statements, witnesses will be called to testify under oath. They will be examined and cross-examined by the attorneys. Documents and other exhibits also may be received as evidence.

After all the evidence has been received, the attorneys will again have an opportunity to address you to make their final arguments. The statements that the attorneys now make and the arguments that they later make are not

to be considered by you either as evidence in the case or as your instruction on the law. Nevertheless, these statements and arguments are intended to help you properly understand the issues, the evidence, and the applicable law, so you should give them your close attention.

Following the final arguments by the attorneys, I will instruct you on the law.

Things to be avoided.

You should give careful attention to the testimony and other evidence as it is received and presented for your consideration, but you should not form or express any opinion about the case until you have received all the evidence, the arguments of the attorneys, and the instructions on the law from me. In other words, you should not form or express any opinion about the case until you are retired to the jury room to consider your verdict, after having heard all of these matters.

I now instruct you not to communicate with anyone, including your fellow jurors, about this case. No communication includes no e-mailing, text messaging, tweeting, blogging, or any other form of communication. You cannot do any research about the case or look up any information about the case. If you become aware of any violation of any of these rules at all, notify court personnel of the violation.

During the course of the trial, the court may take recesses, and you will be permitted to separate and go about your personal affairs. During these recesses you must not discuss the case with anyone nor permit anyone to say anything to you or in your presence about the case. If anyone attempts to say anything to you or in your presence about this case, tell [him] [her] that you are on the jury trying the case and ask [him] [her] to stop. If [he] [she] persists, leave [him] [her] at once and immediately report the matter to the [court deputy] [bailiff], who will advise me.

The trial judge should select one of the following two alternative instructions explaining the rules governing jurors' use of electronic devices, as explained in the Comment section.

Alternative A: All cell phones, computers, tablets or other types of electronic devices must be turned off while you are in the courtroom. Turned off means that the phone or other electronic device is actually off and not in a silent or vibrating mode. You may use these devices during recesses, but even then you may not use your cell phone or electronic device to find out any

information about the case or communicate with anyone about the case or the people involved in the case. Do not take photographs, video recordings or audio recordings of the proceedings or of your fellow jurors. After each recess, please double check to make sure your cell phone or electronic device is turned off. At the end of the case, while you are deliberating, you must not communicate with anyone outside the jury room. You cannot have in the jury room any cell phones, computers, or other electronic devices. If someone needs to contact you in an emergency, the court can receive messages and deliver them to you without delay. A contact phone number will be provided to you.

Alternative B: You cannot have any cell phones, tablets, laptops, or other electronic devices in the courtroom. You may use these devices during recesses, but even then you may not use your cell phone or electronic device to find out any information about the case or communicate with anyone about the case or the people involved in the case. Do not take photographs, video recordings or audio recordings of the proceedings or your fellow jurors. At the end of the case, while you are deliberating, you must not communicate with anyone outside the jury room. If someone needs to contact you in an emergency, the court can receive messages and deliver them to you without delay. A contact phone number will be provided to you.

You must decide this case only on the evidence presented during the trial in your presence, and in the presence of the respondent, the attorneys, and myself. You must not conduct any investigation of your own. This includes reading newspapers, watching television, listening to the radio, or using a computer, cell phone, the Internet, any electronic device, or any other means at all, to get information related to this case or the people and places involved in this case. This applies whether you are in the courthouse, at home, or anywhere else. Accordingly, you must not visit any of the places described in the evidence, or the scene of the occurrence that is the subject of the trial, or use the Internet to look at maps or pictures to see any place discussed during the trial, unless I direct you to view the scene.

Jurors must not have discussions of any sort with friends or family members about the case or the people and places involved. So, do not let even the closest family members make comments to you or ask questions about the trial. In this age of electronic communication, I want to stress again that just as you must not talk about this case face-to-face, you must not talk about this case by using an electronic device. You must not use phones, computers or other electronic devices to communicate. Do not send or accept any messages

related to this case or your jury service. Do not discuss this case or ask for advice by any means at all, including posting information on an Internet website, chat room or blog.

What are the reasons for these rules? These rules are imposed because jurors must decide the case without distraction and only on the evidence presented in the courtroom. If you investigate, research, or make inquiries on your own, the trial judge has no way to make sure that the information you obtain is proper for the case. The parties likewise have no opportunity to dispute or challenge the accuracy of what you find. That is contrary to our judicial system, which assures every party the right to ask questions about and challenge the evidence being considered against it and to present argument with respect to that evidence. Any independent investigation by a juror unfairly and improperly prevents the parties from having that opportunity our judicial system promises.

Any juror who violates these restrictions jeopardizes the fairness of these proceedings and may face serious consequences.

Objections.

The attorneys are trained in the rules of evidence and trial procedure, and it is their duty to make all objections they feel are proper. When a lawyer makes an objection, the objection will either be overruled or sustained. If an objection is overruled, the witness will answer the question. If an objection is sustained or upheld, the witness cannot answer the question. If an objection is sustained, you must not speculate on what might have happened, or what the witness might have said, had the witness been permitted to answer the question. You should not draw any inference from the question itself.

The judge's conferences with attorneys.

During the trial, it may be necessary to confer with the attorneys out of your hearing to discuss matters of law and other matters that require consideration by me alone. It is impossible to predict when such a conference may be required or how long it will last. When such conferences occur, they will be conducted so as to consume as little of your time as is necessary for a fair and orderly trial of the case.

Recesses.

~~During the trial we will take recesses. During these recesses you shall not discuss the case among yourselves or with anyone else, nor permit anyone~~

~~to say anything to you or in your presence about the case. Further, you must not talk with the attorneys, the witnesses, or any of the parties about anything, until your deliberations are finished. In this way, any appearance of something improper can be avoided.~~

~~If during a recess you see one of the attorneys and he or she does not speak to you, or even seem to pay attention to you, please understand that the attorney is not being discourteous but is only avoiding the appearance of some improper contact with you. If anyone tries to say something to you or in your presence about this case, tell that person that you are on the jury trying this case, and ask that person to stop. If he or she keeps on, leave at once and immediately report this to the bailiff or court deputy, who will advise me.~~

At this time, the attorneys for the parties will have an opportunity to make their opening statements, in which they may explain to you the issues in the case and give you a summary of the facts they expect the evidence will show.

Comment

This instruction is based upon Florida Standard Jury Instruction (Civil) 1.1 and Kansas jury instructions regarding the civil commitment of sexually violent predators.

Florida Rule of Judicial Administration 2.451 directs trial judges to instruct jurors on the use of cell phones and other electronic devices. During the trial, the trial judge may remove the jurors' cell phones or other electronic devices. The trial judge also has the option to allow the jurors to keep the cell phones and electronic devices during trial until the jurors begin deliberations. Rule 2.451 prohibits jurors from using the cell phones or electronic devices to find out information about the case or to communicate with others about the case. The jurors also cannot use the electronic devices to record, photograph, or videotape the proceedings. In recognition of the discretion rule 2.451 gives trial judges, this instruction provides two alternatives: (A) requiring jurors to turn off electronic devices during court proceedings and removing their cell phones and electronic devices during deliberations; or (B) removing the cell phones and electronic devices during all proceedings and deliberations. These instructions may be modified to fit the practices of a trial judge in a particular courtroom. These instructions are not intended to limit the discretion of the trial court to control the proceedings.

The portion of this instruction dealing with communication with others and outside research may need to be modified to include other specified means of communication or research as technology develops.

This instruction was adopted in 2000 [777 So. 2d 366] and amended in 2012 [95 So. 3d 868] and 2014.

2.08 VERDICT AND SUBMITTING CASE TO JURY

In just a few moments you will be taken to the jury room by the [court deputy] [bailiff]. The first thing you should do is ~~elect~~choose a foreperson who will preside over your deliberations. ~~The foreperson presides over your deliberations, like the chair person of a meeting.~~ The foreperson should see to it that your discussions are carried on in an organized way and that everyone has a fair chance to be heard. It is also the foreperson's job to sign and date the verdict form when all of you have agreed on a verdict and to bring the verdict form back to the courtroom when you return. ~~in this case. The foreperson will bring the verdict back to the courtroom when you return.~~

During deliberations, jurors must communicate about the case only with one another and only when all jurors are present in the jury room. You are not to communicate with any person outside the jury about this case. Until you have reached a verdict, you must not talk about this case in person or through the telephone, writing, or electronic communication, such as a blog, twitter, e-mail, text message, or any other means. Do not contact anyone to assist you during deliberations. These communications rules apply until I discharge you at the end of the case. If you become aware of any violation of these instructions or any other instruction I have given in this case, you must tell me by giving a note to the [court deputy] [bailiff].

Give if judge has allowed jurors to keep their electronic devices during the trial.

Many of you may have cell phones, tablets, laptops, or other electronic devices here in the courtroom. The rules do not allow you to bring your phones or any of those types of electronic devices into the jury room. Kindly leave those devices on your seats where they will be guarded by the [court deputy] [bailiff] while you deliberate.

If you need to communicate with me, send a note through the [court deputy] [bailiff], signed by the foreperson. If you have questions, I will talk

with the attorneys before I answer, so it may take some time. You may continue your deliberations while you wait for my answer. I will answer any questions, if I can, in writing or orally here in open court.

Give if applicable.

During the trial, [an item] [items] [was] [were] received into evidence as [an] exhibit[s]. You may examine whatever exhibit[s] you think will help you in your deliberations.

Give a or b as appropriate.

a. [The[se] exhibit[s] will be sent into the jury room with you when you begin to deliberate.]

b. [If you wish to see an[y] exhibit[s], please request that in writing.]

Before the respondent may be confined to a secure facility as a sexually violent predator, your verdict must be unanimous; that is, all of you must agree to the same verdict. The verdict must be the verdict of each juror as well as the jury as a whole.

If the verdict is not unanimous but a majority of the jury determines that the respondent is a sexually violent predator, the case may be retried before another jury.

If three or more jurors determine that the respondent is not proven to be a sexually violent predator [he] [she] will not be confined to a secure facility as a sexually violent predator and the case will not be retried before another jury.

The verdict must be in writing and for your convenience the necessary verdict form has been prepared for you. (*Read and explain verdict form.*)

In closing, let me remind you that it is important that you follow the law spelled out in these instructions in deciding your verdict. There are no other laws that apply to this case. Even if you do not like the laws that must be applied, you must use them. For two centuries we have lived by the constitution and the law. No juror has the right to violate rules we all share.

Comment

Based upon § 394.917, Fla. Stat.; Florida Standard Jury Instruction (Criminal) ~~2-093~~.13, Submitting Case to Jury.

This instruction was adopted in 2000 [777 So. 2d 366] and amended in 2012 [95 So. 3d 868] and 2014.