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(The following occurred in the courtroom:)

THE COURT: May we have the jury, please?

Members of the jury, I will now instruct you in

the law that you must apply to the facts as you find
them in reaching a verdict.

As I previously stated, a fundamental principle

1 of our system of criminal law is that a defendant is
2 presumed to be innocent. The fact that he was arrested
3 and is accused of a crime is not evidence against him.

4 Furthermore, a defendant has -- is presumed
5 innocent throughout the trial unless and until you
6 conclude, based on careful and impartial consideration
7 of the evidence, that the Commonwealth has proven him
8 guilty beyond a reasonable doubt.

9 It is not the defendant's burden to prove he is
10 not guilty. Instead, it is the Commonwealth that always
11 has the burden of proving each and every element of the
12 crime charged and that the defendant is guilty of that
13 crime beyond a reasonable doubt.

14 If the Commonwealth's evidence fails to meet
15 its burden then your verdict must be not guilty.

16 On the other hand, if the Commonwealth's
17 evidence does prove beyond a reasonable doubt that the
18 defendant is guilty, then your verdict should be guilty.

19 Although the Commonwealth has the burden of
20 proving the defendant is guilty, this does not mean the
21 Commonwealth must prove its case beyond all doubt or to
22 a mathematical certainty, nor must the Commonwealth
23 demonstrate the complete impossibility of innocence.

24 A reasonable doubt is a doubt that would cause
25 a reasonably careful and sensible person to hesitate

1 before acting upon a matter of importance in his or her
2 own affairs.

3 A reasonable doubt must fairly arise out of the
4 evidence that was presented or out of the lack of
5 evidence presented with respect to some element of the
6 crime charged.

7 A reasonable doubt must be a real doubt. It
8 may not be an imagined one, nor may it be a doubt
9 manufactured to avoid carrying out an unpleasant duty.

10 So to summarize, you may not find the defendant
11 guilty based on mere suspicion of guilt.

12 The Commonwealth has the burden of proving the
13 defendant guilty beyond a reasonable doubt.

14 If the Commonwealth has met that burden, then
15 the defendant is no longer presumed to be innocent and
16 you should find him guilty.

17 On the other hand -- excuse me -- if the
18 Commonwealth has not met its burden then you must find
19 him not guilty.

20 As judges of the facts, you are the sole judges
21 of the credibility of the witnesses and of their
22 testimony. This means you must judge the truthfulness
23 and accuracy of each witness' testimony and decide
24 whether to believe all, part or none of that testimony.

25 The following are some of the factors that you

1 may consider when judging credibility and deciding
2 whether or not to believe testimony:

3 was the witness able to see, hear or know the
4 things about which they testified? How well could the
5 witness remember and describe the things about which
6 they testified?

7 was the ability of the witness to see, hear,
8 know, remember or describe those things affected by
9 youth, old age or any physical, mental or intellectual
10 deficiency?

11 Did the witness -- excuse me. I apologize.

12 Did the witness testify in a convincing manner?
13 How did the witness look, act and speak while
14 testifying? Was the testimony uncertain, confused,
15 self-contradictory or evasive?

16 Did the witness have any interest in the
17 outcome of the case, any bias, prejudice or other motive
18 that might affect their testimony?

19 How well does the testimony of the witness
20 square with the other evidence in the case, including
21 the testimony of other witnesses? Was it contradicted
22 or supported by the other testimony or evidence? And
23 finally, does the testimony make sense?

24 If you believe some part of the testimony of a
25 witness to be inaccurate, consider whether the

1 | inaccuracy casts doubt upon the rest of their testimony.
2 | This may depend on whether the witness has been
3 | inaccurate in an important matter or a minor detail and
4 | on any possible explanation. For example, did the
5 | witness make an honest mistake or simply forget or did
6 | the witness deliberately falsify?

7 | while you are judging the credibility of each
8 | witness, you are likely to be judging the credibility of
9 | other witnesses or evidence.

10 | If there is a real irreconcilable conflict, it
11 | is up to you to decide which, if any, conflicting
12 | testimony or evidence to believe.

13 | As sole judges of credibility and fact, you,
14 | the jurors, are responsible to give the testimony of
15 | every witness and all of the other evidence whatever
16 | credibility and weight you think it deserves.

17 | The defendant took the stand as a witness in
18 | this case. In considering the defendant's testimony,
19 | you are to follow the general instructions I have given
20 | for judging the credibility of any witness.

21 | You should not disbelieve the defendant's
22 | testimony merely because he is the defendant. In
23 | weighing his testimony, however, you may consider the
24 | fact that he has a vital interest in the outcome of this
25 | case.

1 You may take the defendant's interest into
2 account just as you would the interest of any other
3 witness, along with all other facts and circumstances
4 bearing on credibility, in making up your minds about
5 what weight his testimony deserves.

6 The defense offered evidence tending to prove
7 that the defendant is a person of good character, and
8 I'm speaking of the defense witness who testified the
9 defendant has a good reputation for being a law-abiding,
10 peaceable person.

11 The law recognizes that a person of good
12 character is not likely to commit a crime that is
13 contrary to that person's nature. Evidence of good
14 character may, by itself, raise a reasonable doubt of
15 guilt and require a verdict of not guilty. You must
16 weigh and consider the evidence of good character along
17 with the other evidence in the case.

18 If on all the evidence you have a reasonable
19 doubt of the defendant's guilt, you must find him not
20 guilty.

21 However, if on the -- if after reviewing all of
22 the evidence you are satisfied beyond a reasonable doubt
23 that the defendant is guilty, you should find him
24 guilty.

25 You heard evidence that the defendant made a

1 statement on an earlier occasion that may have been
2 inconsistent with his testimony at trial. You may, if
3 you choose, regard this evidence as proof of the truth
4 anything the defendant said in the earlier statement.

5 You may also consider this evidence to help you
6 judge the credibility and weight of the testimony given
7 by the defendant at trial.

8 You heard evidence that one or more witnesses
9 other than the defendant made a statement on an earlier
10 occasion that may have been inconsistent with their
11 testimony at trial. You may consider that evidence for
12 one purpose only, and that is to help you judge the
13 credibility and weight of the testimony given by those
14 witnesses at trial.

15 You may not regard evidence of any earlier
16 inconsistent statement by that witness as proof of the
17 truth of anything said in that statement.

18 You heard evidence that Josue Colon was
19 previously convicted of retail theft. The only purpose
20 for which you may consider this evidence of prior
21 conviction is in deciding whether or not to believe all,
22 part or none of that witness' testimony.

23 In doing so you may consider the type of crime
24 committed, how long ago it was committed and how it may
25 affect the likelihood that the witness has testified

1 truthfully in this case.

2 If you conclude that a witness deliberately
3 testified falsely about a material point; that is, about
4 a matter that could affect the outcome of the trial,
5 then you may, for that reason alone, choose to
6 disbelieve the rest of his or her testimony. However,
7 you are not required to do so.

8 You should consider not only the deliberate
9 falsehood but also all of the other factors bearing on a
10 witness' credibility in deciding whether to believe
11 other parts of that witness' testimony.

12 If you find there is a conflict in the
13 testimony, you, the jury, have the duty of deciding
14 which testimony to believe, but you should first try to
15 reconcile; that is, fit together any conflicts in the
16 testimony if you can fairly do so.

17 Discrepancies and conflicts between the
18 testimony of different witnesses may or may not cause
19 you to disbelieve some or all of their testimony.

20 Remember that two or more persons witnessing an
21 incident may see or hear it happen differently.

22 Also, it is not uncommon for a witness to be
23 innocently mistaken in their recollection of how
24 something happened.

25 If you cannot reconcile a conflict in the

1 testimony, it is up to you to decide which testimony, if
2 any, to believe and which to reject as not true or
3 inaccurate.

4 In making this decision, consider whether the
5 conflict involves a matter of importance or merely some
6 detail and whether the conflict is brought about by an
7 innocent mistake or an intentional falsehood.

8 You should also keep in mind the other factors
9 I have already discussed which go into deciding whether
10 or not to believe a particular witness.

11 In deciding which of conflicting testimony to
12 believe and in deciding the outcome of this case you
13 should not necessarily be swayed by the number of
14 witnesses on either side or the greater amount of
15 evidence.

16 Instead, you should decide which witnesses to
17 believe and which evidence to accept on the basis of
18 whether or not the testimony or evidence is believable.

19 You may find that the testimony of a few
20 witnesses, even of just one witness, is more believable
21 than the opposing testimony of a greater number of
22 witnesses.

23 You should recognize it is entirely possible
24 for a single witness to give truthful and accurate
25 testimony and their testimony may be believed even

1 | though a greater number of witnesses of apparently equal
2 | reliability contradicted that witness.

3 | On the other hand, you should also consider the
4 | extent to which conflicting testimony is supported by
5 | the other evidence.

6 | A question for you to decide, based on all of
7 | these considerations I am discussing with you, is not
8 | which side produced the most evidence but instead which
9 | evidence you believe.

10 | Now, evidence may be of two different types in
11 | a criminal case.

12 | On the one hand there is direct evidence, which
13 | is testimony by a witness from his or her own personal
14 | knowledge, such as something they saw.

15 | The other type is circumstantial evidence,
16 | which is testimony about facts that point to the
17 | existence of other facts that are in question. An
18 | example of circumstantial evidence is as follows:

19 | Suppose you retire on a winter night and the
20 | streets are clear. When you awake in the morning you
21 | see snow on the ground and you see footsteps in the
22 | snow.

23 | Although you did not see it snow overnight you
24 | would properly conclude it had snowed, and although you
25 | did not see someone walking in the snow you would

1 properly conclude that someone had walked in the snow.

2 Whether or not circumstantial evidence is proof
3 of the other facts in question depends, in part, on the
4 application of your common sense and your human
5 experience.

6 You should recognize it is sometimes necessary
7 to rely on circumstantial evidence in criminal cases,
8 particularly where a crime is committed in secret.

9 In deciding whether or not to accept
10 circumstantial evidence as proof of the facts in
11 question you must be satisfied:

12 First, that the testimony of the witness who is
13 presenting the circumstantial evidence is truthful and
14 accurate.

15 And second, that the existence of the facts the
16 witness testifies to leads to the conclusion that the
17 facts in question also happened.

18 Circumstantial evidence alone may be sufficient
19 to prove a defendant's guilt.

20 If there are several separate pieces of
21 circumstantial evidence, it is not necessary that each
22 piece, standing separately, convince you of a
23 defendant's guilt beyond a reasonable doubt.

24 Instead, before you may find the defendant
25 guilty, all the pieces of circumstantial evidence, when

1 considered together, must reasonably and naturally lead
2 to the conclusion that the defendant is guilty and must
3 convince you of the defendant's guilt beyond a
4 reasonable doubt.

5 In other words, you may find the defendant
6 guilty based on circumstantial evidence alone, but only
7 if the total amount and quality of that evidence
8 convince you of the defendant's guilt beyond a
9 reasonable doubt.

10 The speeches of counsel are not part of the
11 evidence and you should not consider them as such.
12 However, in deciding this case, you should carefully
13 consider the evidence in light of the various reasons
14 and arguments presented by each attorney. It is the
15 right and duty of each lawyer to discuss the evidence in
16 a manner that is most favorable to the side they
17 represent.

18 You should be guided by their arguments to the
19 extent they are supported by the evidence and insofar as
20 they aid you in applying your own reason and common
21 sense.

22 However, you are not required to accept the
23 arguments of counsel. It is for you and you alone to
24 decide the case based on the evidence as it was
25 presented from the witness stand and in accordance with

1 the instructions I am now giving to you.

2 Now, I have instructed you in the manner in
3 which you're to consider the evidence as well as the
4 general rules of law. I will now instruct you on the
5 specific charges made against the defendant.

6 And -- excuse me -- to assist in your
7 deliberations, I will be giving you a written list of
8 the elements of the charges that you may use in the jury
9 room.

10 If any matter is repeated or stated in a
11 different way in my instructions now as opposed to what
12 you receive in the jury room, no emphasis is intended.

13 Do not draw any inference because of
14 repetition. Do not single out any individual rule or
15 instruction and ignore the others. Do not place greater
16 emphasis on the elements of the offenses simply because
17 I will be providing them to you in writing and the other
18 instructions will not be given to you in writing.
19 Consider all of the instructions as a whole, and each in
20 light of the others.

21 If during your deliberations you have a
22 question or feel you need further assistance or
23 instruction from me, write that question down on a piece
24 of paper and give it to the bailiff.

25 You may ask questions about any of the

1 instructions that I am giving you whether they were
2 given to you orally or in writing.

3 The defendant has been charged with six counts
4 of criminal attempt to commit homicide, also known as
5 attempted murder.

6 Count 1 involves Randy Brandt.

7 Count 2 involves Devon Schaefer.

8 Count 3 involves Josue Colon.

9 Count 4 involves Billy Joe Varner.

10 Count 5 involves Joshua Norwood.

11 Count 6 involves Jeremy Ross-Gates.

12 And you're going to get a verdict slip that
13 will list each count, the specific charge and the
14 alleged victim. So this will all be written out on the
15 verdict slip that you receive.

16 Each count must be decided separately. To find
17 the defendant guilty of any of these offenses you must
18 find that the following three elements have been proven
19 beyond a reasonable doubt:

20 First, that the defendant shot at Randy Brandt,
21 Devon Schaefer, Josue Colon, Billy Joe Varner, Joshua
22 Norwood and/or Jeremy Ross-Gates.

23 The second element for attempted murder is that
24 at the time of the shooting the defendant had the
25 specific intent to kill Randy Brandt, Devon Schaefer,

1 Josue Colon, Billy Joe Varner, Joshua Norwood and/or
2 Jeremy Ross-Gates; that is, he had a fully formed intent
3 to kill and was conscious of his own intention.

4 And the third element is that the shooting
5 constituted a substantial step toward the commission of
6 the killing or the attempted killing that the defendant
7 intended to bring about.

8 A person cannot be guilty of an attempt to
9 commit a crime unless they do an act which constitutes a
10 substantial step toward the commission of that crime.

11 An act is a substantial step if it is a major
12 step toward the commission of the crime and also
13 strongly corroborates the jury's belief that the person,
14 at the time they did the act, had a firm intent to
15 commit that crime.

16 An act can be a substantial step even though
17 other steps would have to be taken before the crime
18 could be carried out.

19 As I have told you, one of the elements of
20 attempted murder is that the defendant had the specific
21 intent to kill.

22 Ordinarily it is not possible to prove intent
23 by direct evidence unless, for example, there is
24 evidence that the defendant made a statement concerning
25 his state of mind.

1 However, intent, like any other matter, may be
2 proven by circumstantial evidence; that is, by
3 inferences that reasonably may be drawn from all the
4 facts and circumstances, including the defendant's acts
5 and conduct which have been shown by the evidence in
6 this case.

7 When deciding whether the defendant had the
8 specific intent to kill, you should consider all the
9 evidence regarding his words and conduct and the
10 attending circumstances that may show his state of mind.

11 Specific intent to kill can be formed in a
12 fraction of a second.

13 If you believe that the defendant intentionally
14 used a deadly weapon on a vital part of the victim's
15 body you may regard that as an item of circumstantial
16 evidence from which you may, if you choose, infer that
17 the defendant had the specific intent to kill.

18 To apply such an inference, you need not find
19 the defendant specifically aimed his weapon at a vital
20 part of the victim's body but rather only that a deadly
21 weapon was, in fact, used on a vital part of the body.

22 Also, the Commonwealth need not prove that the
23 deadly weapon actually entered a vital organ before the
24 inference of a specific intent to kill can arise, but
25 rather, the defendant's mere use of a deadly weapon in

1 the general area in which vital organs are located can,
2 in and of itself, be sufficient to prove specific intent
3 to kill beyond a reasonable doubt.

4 The term deadly weapon is defined as any device
5 or instrumentality which, in the manner in which it is
6 used or intended to be used, is calculated or likely to
7 produce death or serious bodily injury.

8 For purposes of the deadly weapon inference, a
9 vital part of the body means a portion of the body
10 containing organs necessary to the continuance of life.

11 Thus, you may conclude that the defendant acted
12 with the specific intent to kill based on circumstantial
13 evidence alone, but only if the circumstantial evidence
14 is strong enough to convince you that the Commonwealth
15 has established this intent beyond a reasonable doubt.

16 The defendant has been charged with six counts
17 of aggravated assault for attempting to cause serious
18 bodily injury to another person or causing serious
19 bodily injury to that person.

20 The Commonwealth alleges that the defendant
21 attempted to cause and did, in fact, cause serious
22 bodily injury to Randy Brandt at Count 7; Devon Schaefer
23 at Count 8; Josue Colon at Count 9; and Billy Joe Varner
24 at Count 10.

25 The Commonwealth alleges that the defendant

1 attempted to cause but did not cause serious bodily
2 injury to Joshua Norwood at Count 11; and Billy Joe
3 Varner (sic) at Count 12.

4 Each count must be decided separately.

5 To find the defendant guilty of aggravated
6 assault for attempting to cause serious bodily injury to
7 another, you must find that each of the following two
8 elements have been proven beyond a reasonable doubt:

9 First, that the defendant attempted to cause
10 serious bodily injury to Randy Brandt, Devon Schaefer,
11 Josue Colon, Billy Joe Varner, Joshua Norwood and/or
12 Jeremy Ross-Gates.

13 Serious bodily injury means bodily injury that
14 would create a substantial risk of death or that would
15 cause serious permanent disfigurement or protracted loss
16 or impairment of the function of any bodily member or
17 organ.

18 In order to find that the defendant attempted
19 to do this, you must find that he engaged in conduct
20 that constituted a substantial step toward causing
21 serious bodily injury to any one of those individuals.

22 That is the first element.

23 The second element is that the defendant's
24 conduct in this regard was intentional; in other words,
25 that it was his conscious object or purpose to cause

1 such serious bodily injury.

2 It is important that you understand how these
3 two elements relate to each other in order to assess
4 whether they have each been proven beyond a reasonable
5 doubt.

6 In proving this count of aggravated assault for
7 attempting to cause serious bodily injury the
8 Commonwealth need not prove that serious bodily injury
9 was actually inflicted on the alleged victim.

10 The Commonwealth must prove, however, that the
11 defendant took an action; that is, a substantial step of
12 such a nature that there is no reasonable doubt but that
13 it was his conscious object or purpose to cause such a
14 life-threatening injury to the alleged victim.

15 To make this determination for the counts
16 involving Joshua Norwood and Billy Joe Varner where the
17 Commonwealth does not allege that serious bodily injury
18 was suffered, you may find it useful to ask why the
19 alleged victim or victims did not actually suffer
20 serious bodily injury as a result of this incident.

21 If you find that such injury did not occur only
22 because of something outside the control of the
23 defendant, such as the intervention of a third party to
24 stop the attack or the ability of the alleged victim to
25 avoid the full brunt of the attack or the prompt

1 administration of medical attention that prevented the
2 injuries from developing into the kind that would meet
3 the definition of serious bodily injury, then you may
4 consider that as evidence as to whether the defendant's
5 substantial step was done with the intent necessary to
6 support a verdict of guilty on this count.

7 However, any particular action by a defendant,
8 although serious, such as pointing a loaded weapon at
9 another, is not, in and of itself, sufficient evidence
10 from which you may find that he intended to cause
11 serious bodily injury.

12 This is so because any such action may also be
13 evidence of some less serious outcome the defendant
14 actually intended, such as simply to scare the alleged
15 victim or to cause only some less serious injury.

16 It is only when, after consideration of all the
17 evidence, you conclude, beyond a reasonable doubt, that
18 the defendant's action was a substantial step in a chain
19 of events he consciously set in motion with his intended
20 result being that the alleged victim would actually
21 suffer serious bodily injury, that you should find him
22 guilty of aggravated assault for attempting to cause
23 serious bodily injury.

24 Otherwise, you should find the defendant not
25 guilty of aggravated assault for attempting to cause

1 serious bodily injury to another person.

2 AS I mentioned, the defendant has been charged
3 with six counts of aggravated assault for attempting to
4 cause or causing serious bodily injury to another
5 person.

6 Once again, the defendant (sic) alleges that
7 the defendant not only attempted to cause but did cause
8 serious bodily injury to Randy Brandt, Devon Schaefer,
9 Josue Colon and Billy Joe Varner.

10 To find the defendant guilty of aggravated
11 assault for causing serious bodily injury, you must find
12 that each of the following two elements have been proven
13 beyond a reasonable doubt:

14 First, that the defendant caused serious bodily
15 injury to Randy Brandt, Devon Schaefer, Josue Colon
16 and/or Billy Joe Varner.

17 Again, serious bodily injury is bodily injury
18 that creates a sub -- substantial risk of death or that
19 causes serious permanent disfigurement or protracted
20 loss or impairment of the function of any bodily member
21 or organ.

22 So that is the first element.

23 The second element is that the defendant acted
24 intentionally, knowingly or recklessly under
25 circumstances manifesting an extreme indifference to the

1 value of human life.

2 A person acts intentionally with respect to
3 serious bodily injury when it is their conscious object
4 or purpose to cause such injury.

5 A person acts knowingly with respect to serious
6 bodily injury when he is aware it is practically certain
7 his conduct will cause such a result.

8 A person acts recklessly with respect to
9 serious bodily injury when he consciously disregards a
10 substantial and unjustifiable risk that serious bodily
11 injury will result from his conduct.

12 The risk must be of such a nature and degree
13 that, considering the nature and intent of the
14 defendant's conduct and the circumstances known to him,
15 its disregard involves a gross deviation from the
16 standard of conduct that a reasonable person would
17 observe in the defendant's situation.

18 It is shown by the kind of reckless conduct
19 from which a life-threatening injury is almost certain
20 to occur.

21 If you are satisfied that these two elements of
22 aggravated assault have been proven beyond a reasonable
23 doubt, then you should find the defendant guilty of
24 aggravated assault for causing serious bodily injury.

25 Otherwise, you must find the defendant not

1 guilty of aggravated assault for causing serious bodily
2 injury.

3 The defendant has been charged with two counts
4 of recklessly endangering another person in relation to
5 the two occupants at 6 Eastbrooke Drive in Ephrata
6 Borough. Those are listed as Counts 13 and 14 on the
7 verdict slip. Each count must be decided separately.

8 To find the defendant guilty of either offense
9 you must find that the defendant recklessly did
10 something that placed or may have placed one or both of
11 the occupants of that residence in danger of death or
12 serious bodily injury.

13 A person acts recklessly with respect to
14 serious bodily injury when he consciously ignores a
15 great and unjustifiable risk that what he is doing will
16 cause another person to be seriously injured.

17 The risk must be so serious that, considering
18 what a defendant did and what his intentions were, he
19 acted in a way that would amount to a gross deviation
20 from the standard of conduct that a reasonable person in
21 his situation would have followed.

22 If you find that the Commonwealth has proven
23 these elements beyond a reasonable doubt, then you
24 should find the defendant guilty of recklessly
25 endangering another person.

1 Otherwise, you must find the defendant not
2 guilty.

3 The defendant has been charged with two counts
4 of knowingly, intentionally or recklessly discharging a
5 firearm from any location into an occupied structure.

6 Count 15 involves 6 Eastbrooke -- Eastbrooke
7 Drive in Ephrata Township, and Count 16 involves 7
8 Eastbrooke Drive in Ephrata Township. Each count must
9 be decided separately.

10 To find the defendant guilty of either of these
11 offenses you must find all of the following elements,
12 three elements, have been proven beyond a reasonable
13 doubt:

14 First, that the defendant discharged a firearm
15 into an occupied structure; namely, 6 Eastbrooke Drive
16 in Ephrata Township.

17 A firearm is any weapon that is designed to or
18 may readily be converted to expel any projectile by the
19 action of an explosion or the frame or receiver of any
20 such weapon.

21 An occupied structure is any structure, vehicle
22 or place adapted for overnight accommodation of persons
23 or for carrying on business therein whether or not a
24 person is actually present.

25 That is the first element.

1 The second element is the -- is that the
2 defendant was not in the occupied structure when he
3 discharged the firearm into it.

4 And the third element is that the defendant did
5 so intentionally, knowingly or recklessly.

6 Again, definitions.

7 A person acts intentionally when it is his
8 conscious object or purpose to discharge a firearm into
9 an occupied structure.

10 A person acts knowingly when he is aware it is
11 practically certain his conduct will cause such a
12 result.

13 A person acts recklessly when he consciously
14 disregards a substantial and unjustifiable risk that his
15 conduct will bring about such a result.

16 The risk must be of such a nature and degree
17 that, considering the nature and intent of the
18 defendant's conduct and the circumstances known to him,
19 its disregard involves a gross deviation from the
20 standard of conduct that a reasonable person would
21 observe in the defendant's situation.

22 If you find that the Commonwealth has proven
23 these elements beyond a reasonable doubt, then you
24 should find the defendant guilty of discharging a
25 firearm into an occupied structure.

1 Otherwise, you must find the defendant not
2 guilty.

3 Voluntary intoxication or drugged condition is
4 not a defense to a criminal charge. A person who
5 voluntarily uses intoxicants or drugs cannot become so
6 intoxicated or drugged that they are legally incapable
7 of committing a crime.

8 There is another related rule. A defendant is
9 not allowed to rely on evidence of their intoxication or
10 drugged condition to prove they lacked a mental state
11 required for a particular crime.

12 Keep this rule in mind when you are deciding
13 whether the defendant had the intent to kill or the
14 intent to cause serious bodily injury required.

15 The defendant has raised the issue of whether
16 he acted in self-defense when he discharged the firearm.

17 Self-defense is called justification in the law
18 of Pennsylvania. If the defendant's actions were
19 justified, you cannot find him guilty beyond a
20 reasonable doubt.

21 The issue having been raised, it is the
22 Commonwealth's burden to prove, beyond a reasonable
23 doubt, that the defendant did not act in justifiable
24 self-defense.

25 To prove that deadly force was not justifiable

1 in this case, the Commonwealth must prove any one of the
2 following three elements beyond a reasonable doubt:

3 The first is that the defendant did not
4 reasonably believe he was in immediate danger of death
5 or serious bodily injury from Randy Brandt, Devon
6 Schaefer, Josue Colon, Billy Joe Varner, Joshua Norwood
7 and/or Jeremy Ross-Gates at the time he used the force,
8 and, therefore, his belief that it was necessary for
9 him -- for him to use deadly force to protect himself
10 was unreasonable.

11 Put another way, the Commonwealth must prove
12 either that the defendant did not actually believe he
13 was in danger of death or serious bodily injury such
14 that he needed to use deadly force to defend himself at
15 that moment, or, while the defendant actually believed
16 he needed to use such force, his belief was unreasonable
17 in light of all of the circumstances known to him.

18 Keep this in mind. A person is justified in
19 using deadly force against another not only when they
20 are in actual danger of unlawful attack but also when
21 they mistakenly but reasonably believe they are.

22 A person is entitled to estimate the necessity
23 for the force he employs under the circumstances as he
24 reasonably believes them to be at the time.

25 In the heat of conflict, a person who has been

1 attacked ordinarily has neither time nor composure to
2 evaluate carefully the danger and make nice judgments
3 about exactly how much force is needed to protect
4 himself.

5 Consider the realities of the situation faced
6 by the defendant here when you assess whether the
7 Commonwealth has proven, beyond a reasonable doubt,
8 either that he did not believe he was actually in danger
9 of death or serious bodily injury to the extent that he
10 needed to use such force in self-defense, or, that while
11 he did believe that, his belief was unreasonable.

12 So as I said, there are three elements for the
13 Commonwealth to prove beyond a reasonable doubt the
14 defendant did not act in justifiable self-defense.

15 That is the first.

16 The second is --

17 And it's any one of the three. It's not all
18 three.

19 The second, that in the same encounter with
20 Randy Brandt, Devon Schaefer, Josue Colon, Billy Joe
21 Varner, Joshua Norwood and Jeremy Ross-Gates, the
22 defendant engaged in conduct that demonstrated his
23 intent to cause death or serious bodily injury, and by
24 that conduct the defendant provoked the use of force
25 against himself.

1 The conduct of a defendant must be of such a
2 nature that it shows it was his conscious object to
3 cause death or serious bodily injury to the alleged
4 victim or victims.

5 Conduct that is not of such a nature does not
6 constitute the kind of provocation upon which the
7 Commonwealth may rely to prove its case.

8 If you find beyond a reasonable doubt that the
9 defendant's acts were of such a nature, you must then
10 ask whether it provoked the similar use of force against
11 him.

12 In this assessment, the conduct by the
13 defendant may be the initial provocation of the fight or
14 it may be an act that continues or escalates it.

15 However, even if the defendant was the initial
16 aggressor or was the person who escalated the incident
17 to one involving use of deadly force, if he thereafter
18 withdraws in good faith, making it clear that his
19 further intentions are peaceable, and the alleged victim
20 pursues him and renews the fight, a defendant does not
21 forfeit their right to claim justifiable self-defense.

22 If, on the other hand, you find beyond a
23 reasonable doubt that the defendant provoked the use of
24 force against him by engaging in conduct that showed he
25 intended to cause death or serious bodily injury to the

1 alleged victim or victims, you may find that his conduct
2 was not justified.

3 That is the second element.

4 The third element the Commonwealth may prove
5 beyond a reasonable doubt with regard to justifiable
6 self-defense, and to essentially disprove justifiable
7 self-defense, is that the defendant knew he could avoid
8 the necessity of using deadly force with complete safety
9 by retreating but he failed to do so.

10 If the Commonwealth proves any one of these
11 three elements beyond a reasonable doubt, then the
12 actions of the defendant in using deadly force are not
13 justified.

14 If the Commonwealth fails to prove any of these
15 three elements, the defendant's action was justified and
16 you must find him not guilty.

17 The defendant also asserts that if his actions
18 in using deadly force were not justified he was acting
19 under heat of passion or unreasonable belief
20 self-defense that would reduce the charge of attempted
21 murder to attempted voluntary manslaughter.

22 Before defining voluntary manslaughter I will
23 tell you about malice, which is an element of murder or
24 attempted murder but not of manslaughter.

25 A person who kills or attempts to kill must act

1 with malice to be guilty of murder or attempted murder.

2 The word malice as I am using it has a special
3 legal meaning. It does not mean simply hatred, spite or
4 ill will. Malice refers to a mental state that the law
5 regards as being bad enough to make a killing murder or
6 attempted murder.

7 For murder of the first degree, a killing is
8 with malice if the perpetrator acts with an intent to
9 kill or the killing is willful, deliberate and
10 premeditated.

11 A killing is also with malice if the
12 perpetrator's actions show his wanton and willful
13 disregard of an unjustified and extremely high risk that
14 his conduct would result in death or serious bodily
15 injury to another.

16 In this form of malice, the Commonwealth need
17 not prove that the perpetrator specifically intended to
18 kill another. The Commonwealth must prove, however,
19 that the defendant took action while consciously; that
20 is, knowingly disregarding the most serious risk he was
21 creating, and that by his disregard of that risk he
22 demonstrated his extreme indifference to the value of
23 human life.

24 A person has the specific intent to kill if
25 they have a fully-formed intent to kill and they are

1 conscious of their own intention.

2 An attempted killing by a person who has the
3 specific intent to kill is an attempted killing with
4 malice unless there are circumstances reducing the
5 killing to voluntary manslaughter or any lawful
6 justification self-defense which I have already
7 explained to you.

8 The specific intent to kill, including the
9 premeditation needed for attempted murder, does not
10 require planning or previous thought or any particular
11 length of time. It can occur quickly.

12 All that is necessary is that there be time
13 enough so that the defendant can and does fully form an
14 intent to kill and is conscious of that intention.

15 When deciding whether the defendant had the
16 specific intent to kill, you should consider all of the
17 evidence regarding his words and conduct and the
18 attending circumstances that may show his state of mind.

19 If you believe that the defendant intentionally
20 used a deadly weapon on a vital part of the victim's
21 body you may regard that as an item of circumstantial
22 evidence from which you may, if you choose, infer that
23 the defendant had the specific intent to kill.

24 As my earlier definition of malice indicates,
25 there can be no malice when certain reducing

1 circumstances are present. When these circumstances are
2 present an attempted killing may be attempted voluntary
3 manslaughter but never attempted murder.

4 This is true when a defendant attempts to kill
5 in the heat of passion, following serious provocation or
6 attempts to kill under an unreasonable mistaken belief
7 in justifying circumstances.

8 Accordingly, you can find malice and attempted
9 murder only if you are satisfied beyond a reasonable
10 doubt that the defendant was not acting under a sudden
11 and intense passion resulting from serious provocation
12 by the victim or another person whom the defendant was
13 trying to kill or under an unreasonable belief that the
14 circumstances were such that if they exist it would have
15 justified the attempted killing.

16 A defendant acts under an intense passion if he
17 acts under an emotion such as anger, rage, sudden
18 resentment or terror that is so strong that it renders
19 him incapable of cool reflection.

20 A defendant acts under a sudden passion if the
21 time between the provocation and the killing is -- or
22 attempted killing is not long enough for the passion of
23 a reasonable person to cool.

24 A defendant's passion results from serious
25 provocation if it results from conduct or events that

1 are sufficient to excite an intense passion in a
2 reasonable person.

3 Thus the existence of intense passion turns on
4 the actual mental and emotional state of the defendant,
5 while the existence of sudden passion and serious
6 provocation turn on how a reasonable person
7 confronted -- confronted by the same provocation would
8 react.

9 Remember you can find malice and attempted
10 murder only if you are satisfied beyond a reasonable
11 doubt that the defendant was not acting under a sudden
12 and intense passion resulting from serious provocation
13 by the victim or by another person whom the defendant
14 was trying to kill.

15 The law recognizes that the cumulative impact
16 of a series of related events can lead to sudden passion
17 and amount to serious provocation. The test is whether
18 a reasonable person, confronted with the same series of
19 events, would become so impassioned that they would be
20 incapable of cool reflection.

21 The reducing circumstance of a defendant acting
22 under an unreasonable belief that the circumstances of
23 the attempted killing were justified applies where the
24 defendant actually believed he was in immediate danger
25 of death or serious bodily injury at the time he used

1 deadly force but his belief was unreasonable in light of
2 the facts as they appeared to him at the time; the
3 defendant did not provoke the use of force by the
4 alleged victim by engaging in conduct that showed it was
5 his intent to cause death or serious bodily injury to
6 the alleged victim; and the defendant did not violate
7 his duty to retreat from the place, as I explained when
8 I described to you the justification defense.

9 Therefore, you can find malice and attempted
10 murder only if the Commonwealth proves beyond a
11 reasonable doubt one of the following elements:

12 That the defendant did not actually believe he
13 was in immediate danger of death or serious bodily
14 injury from the victim or victims at the time he used
15 deadly force.

16 Note that the unreasonableness of the
17 defendant's belief is not an issue here as it was when I
18 explained justification to you.

19 The question is whether the defendant actually
20 believed such an immediate danger existed at the time he
21 used deadly force, and to prove malice through this
22 element, the Commonwealth must prove that the defendant
23 did not actually hold such a belief.

24 Or, second --

25 As I said, you can find malice and attempted

1 murder only if the Commonwealth proves beyond a
2 reasonable doubt one of the following.

3 That was the first.

4 The second is the defendant provoked the use of
5 force by the alleged victim by engaging in conduct that
6 showed it was his intent to cause death or serious
7 bodily injury to the alleged victim.

8 Or the third would be the defendant could have
9 avoided the use of deadly force by retreating from the
10 place as I previously defined this concept for you when
11 I discussed the defense of justification.

12 If you find that the defendant did not have
13 malice and, therefore, he did not attempt to commit
14 murder, you may find him guilty of attempted voluntary
15 manslaughter as long as you are satisfied the following
16 three elements have been proven beyond a reasonable
17 doubt:

18 First, that the defendant discharged a firearm.

19 Second, that the defendant attempted to kill
20 Randy Brandt, Devon Schaefer, Josue Colon, Billy Joe
21 Varner, Joshua Norwood and/or Jeremy Ross-Gates.

22 And, third, that the act constituted a
23 substantial step toward the commission of the attempted
24 killing.

25 Now, those are the elements of the crimes as

1 well as justification self-defense and the lesser
2 included attempted voluntary manslaughter.

3 Before you retire to decide this case I would
4 like to provide you with some final guidelines for a way
5 in which you may deliberate and properly arrive at a
6 verdict.

7 It is my responsibility to decide all questions
8 of law. Therefore, you must accept and follow my
9 rulings and instructions on matters of law.

10 As I said before, during deliberations if you
11 would like additional instruction or clarification,
12 please write down your question on a piece of paper and
13 give it to the bailiff.

14 However, I am not the judge of the facts, and
15 it will not be for me to decide the true facts
16 concerning the charges against the defendant.

17 You, the jurors, are the sole judges of the
18 facts, and it will be your responsibility to consider
19 the evidence, to find the facts from that evidence and,
20 applying the law to the facts as you find them, to
21 decide whether or not the defendant has been proven
22 guilty of the charges beyond a reasonable doubt.

23 Your decision in this case, as in every case,
24 is a matter of considerable importance.

25 Remember, it is your responsibility as jurors

1 to perform your duties and to reach a verdict based on
2 the evidence as it was presented in the courtroom during
3 the trial.

4 However, in deciding the facts you may properly
5 apply your common sense and draw upon your own everyday
6 practical knowledge of life as each of you has
7 experienced it.

8 You should keep your deliberations free of any
9 bias or prejudice. Both the Commonwealth and the
10 defendant have a right to expect you to consider the
11 evidence conscientiously and to apply the law as I have
12 outlined it to you.

13 In arriving at a verdict, you should not
14 concern yourselves with any possible future
15 consequences, including what the penalty might be if you
16 should find the defendant guilty. If the jury does find
17 the defendant guilty it becomes the Judge's
18 responsibility to fix the penalty.

19 In order to return a verdict, each juror must
20 agree. In other words, your verdict must be unanimous.

21 You, as jurors, have a duty to consult with one
22 another and to deliberate with a view to reaching a
23 unanimous agreement if that can be done without doing
24 any violence to your individual judgment.

25 That is to say, each juror must decide this

1 case for himself or herself but only after there has
2 been impartial consideration of the evidence with your
3 fellow jurors.

4 In the course of deliberations do not hesitate
5 to re-examine your own views and change your opinion if
6 you become convinced is erroneous.

7 However, no juror should surrender their honest
8 conviction as to the weight or effect of the evidence or
9 as to the guilt or innocence of the defendant solely
10 because of the opinion of your fellow jurors or for the
11 mere purpose of returning a unanimous verdict.

12 You are going to be provided, first of all, as
13 I said before, a written printout of the elements of the
14 crimes. And they're attached.

15 This is attempted murder; aggravated assault;
16 attempted serious bodily injury and bodily -- serious
17 bodily injury caused; recklessly endangering another
18 person; discharge of firearm into occupied structure;
19 justification; use of deadly force in self-defense and
20 attempted voluntary manslaughter.

21 What I am giving to you is what I read verbatim
22 to you just now so there is no difference.

23 You are also going to be given an envelope with
24 a verdict slip.

25 What you need to do when you retire to

1 deliberate, which will be momentarily, is to choose from
2 you a jury foreperson. That individual will lead the
3 jury in your deliberations, your discussions. The jury
4 foreperson will fill out the verdict slip, and the jury
5 foreperson will read the verdict in open court once you
6 have reached a unanimous decision.

7 At the top of the first page of the verdict
8 slip, the caption of the case, Commonwealth of
9 Pennsylvania versus Mark Ivie, Jr.

10 Below that it says, verdict slip.

11 Below that it says, AND NOW, this blank day of
12 October, 2021, we, the jury impaneled in the above case
13 find the defendant.

14 Below that we have all the counts listed.

15 The jury foreperson will fill -- you probably
16 can't see it from there, but anyway, right here fill in
17 the date the verdict is reached.

18 And this is actually a four-page verdict slip.
19 On the bottom of the fourth page, after the foreperson
20 has filled out each of the counts, is a line for the
21 foreperson to sign the verdict slip.

22 Now, on the verdict slip itself, as I said,
23 it's four pages, and it just goes in numerical order
24 from Counts 1 through 16, starting with the first six
25 counts are criminal attempt homicide and on each count

1 the alleged victim is listed.

2 As I said, Count 1 is Randy Brandt.

3 Count 2, Devon Schaefer.

4 Count 3, Josue Colon.

5 Count 4, Billy Joe Varner.

6 Count 5, Joshua Norwood.

7 Count 6, Jeremy Ross-Gates.

8 And then you'll see under each count, and this
9 is for every count, all 16 counts, there's a line that
10 says guilty or not guilty. The foreperson will check
11 the appropriate line after you've reached a unanimous
12 verdict.

13 Below that, for the first four counts, and
14 those are the four counts where the Commonwealth has
15 alleged that the defendant did, in fact, cause serious
16 bodily injury to those victims, there is a question. It
17 reads as follows:

18 If guilty, did the Commonwealth prove beyond a
19 reasonable doubt that the defendant did, in fact, cause
20 serious bodily injury to the victim? Below that, yes or
21 no.

22 So you only get to this question if you find
23 the defendant guilty of criminal attempt homicide.

24 If you find the defendant not guilty of
25 criminal attempt homicide, you then go down to the

1 second question listed, and that second question is
2 listed for these first four counts, as well as Counts 5
3 and 6 where the Commonwealth is not alleging that the
4 victim sustained serious bodily injury.

5 But for the first four counts, as I said, it
6 will be, if guilty, did the Commonwealth prove beyond a
7 reasonable doubt that the defendant did, in fact, cause
8 serious bodily injury to the victim?

9 If not guilty, don't answer on the first four
10 counts of that question. Go to the second question.

11 If guilty, you go to the second question.

12 Well, actually, no. I'm sorry. The second
13 question you go only if not guilty.

14 It says, if not guilty of criminal attempt
15 homicide, did the Commonwealth prove beyond a reasonable
16 doubt that the defendant is guilty of attempted
17 voluntary manslaughter? Yes or no.

18 So if you find the defendant guilty of criminal
19 attempt homicide you don't answer the second question
20 for the first four counts.

21 If you find the defendant not guilty of
22 criminal attempt homicide, you would answer that second
23 question as it relates to attempted voluntary
24 manslaughter.

25 And then when you get to Counts 5 and 6, again

1 that's criminal attempted homicide, Joshua Norwood,
2 Jeremy Ross-Gates, you are not asked the question that
3 you were in the first four counts, if guilty did the
4 Commonwealth prove beyond a reasonable doubt that the
5 defendant did, in fact, cause serious bodily injury to
6 the victim, because the Commonwealth has conceded
7 that -- that they did not sustain serious bodily injury.

8 But you will be asked that question. If you
9 find, and only if you find the defendant not guilty of
10 criminal homicide on those two counts, 5 and 6, whether
11 the Commonwealth proved beyond a reasonable doubt that
12 the defendant is guilty of attempted voluntary
13 manslaughter? Yes or no.

14 So those are the first six counts dealing with
15 attempted murder and/or attempted voluntary manslaughter
16 as a lesser offense.

17 Then Counts 7, 8, 9, 10, 11 and 12 are
18 aggravated assault.

19 And as you recall from my instruction,
20 aggravated assault is charged as an attempt to cause
21 serious bodily injury or does, in fact, cause serious
22 bodily injury.

23 The first four counts of aggravated assault,
24 they would be Counts 7, 8, 9 and 10, involve Randy
25 Brandt, Devon Schaefer, Josue Colon and Billy Joe Varner

1 where the Commonwealth has alleged serious bodily
2 injury. So on those counts there is a -- you will check
3 guilty or not guilty.

4 Immediately below where it says guilty or not
5 guilty there's a question, if guilty, only if guilty.
6 If guilty, did the Commonwealth prove beyond a
7 reasonable doubt that the defendant did attempt to cause
8 serious bodily injury to the victim? Yes or no.

9 Below that a second question, if guilty, did
10 the Commonwealth prove beyond a reasonable doubt that
11 the defendant did, in fact, cause serious bodily injury
12 to the victim?

13 So that would be Counts 7, 8, 9 and 10.

14 Then on 11 and 12 involving Joshua Norwood and
15 Jeremy Ross-Gates, again, that would be aggravated
16 assault but the Commonwealth is not alleging that the
17 defendant caused serious bodily injury, the Commonwealth
18 is alleging the defendant attempted to cause serious
19 bodily injury to those two individuals. And so you
20 would answer guilty or not guilty and there is no
21 separate question.

22 Then Counts 13 and 14, you will see here,
23 recklessly endangering another person, in parentheses, 6
24 Eastbrooke Drive, guilty or not guilty, each count
25 relating to the two separate individuals in the

1 residence.

2 Counts 15 and 16, discharging firearm into
3 occupied structure.

4 Count 15 is 6 Eastbrooke Drive; Count 16 is 7
5 Eastbrooke Drive, guilty or not guilty.

6 So that is the verdict slip. And, again, as I
7 say, you will select a foreperson who will fill this
8 out.

9 Once you have reached a verdict, notify the
10 bailiff. We will bring you back into the courtroom for
11 the foreperson to announce the verdict.

12 Is there anything further from either counsel
13 at this time?

14 ATTORNEY ANDERSON: Yes, Your Honor.

15 THE COURT: All right.

16 ATTORNEY ANDERSON: If we may approach?

17 THE COURT: Yes.

18 (A sidebar was held off the record.)

19 ATTORNEY ANDERSON: When Your Honor read the
20 instruction for aggravated assault, attempted serious
21 bodily injury, where you noted the two victims for whom
22 the Commonwealth does not allege serious bodily injury
23 was inflicted, you named Billy Joe Varner as one of
24 them.

25 THE COURT: Let me see. For which one, causing

1 --

2 ATTORNEY ANDERSON: For attempted SBI.

3 THE COURT: For attempted SBI?

4 ATTORNEY ANDERSON: Yeah.

5 THE COURT: I -- I did state all of six of
6 them.

7 ATTORNEY ANDERSON: But at the end of the
8 instruction you say -- you -- you noted that there's two
9 individuals for whom the Commonwealth are not alleging
10 that serious bodily injury was inflicted, and you listed
11 Billy Joe Varner as being one of the two.

12 THE COURT: During my instruction or --

13 ATTORNEY ANDERSON: Yes, during your
14 instruction.

15 THE COURT: And you're sure that wasn't
16 aggravated assault, causing serious bodily injury?

17 ATTORNEY PODRAZA: It may have been then.
18 No, it was the attempt.

19 THE COURT: Well, this is what I read. So you
20 tell me where you think that I read that.

21 ATTORNEY ANDERSON: When was the second time?
22 I only picked it up once.

23 Your Honor, in what you handed me it's here.

24 THE COURT: Point to it again specifically.

25 ATTORNEY PODRAZA: I believe it's down here.

1 THE COURT: Right here?

2 ATTORNEY PODRAZA: I think it simply needs to
3 say Jeremy Ross-Gates. That's all.

4 ATTORNEY ANDERSON: Right.

5 THE COURT: Well, I -- what I read was the same
6 language that I provided both counsel in chambers.

7 ATTORNEY ANDERSON: I understand. I must have
8 missed it when I was reviewing it before.

9 THE COURT: All right. And you don't think
10 that any further instruction is needed on the verdict
11 slip, that it has been made clear to the jury?

12 ATTORNEY ANDERSON: I'm sure that upon review
13 of the verdict slip it will be clear.

14 I just wanted to make sure that there's nothing
15 going back with them to suggest that we're not pursuing
16 serious bodily injury with respect to a victim for whom
17 we are.

18 THE COURT: Do you want me to clarify that?

19 ATTORNEY ANDERSON: It -- it may -- it would
20 suffice for my purposes if you would just say, you know,
21 when you said it before you accidentally said the one
22 guy but you meant the other guy, and the slip is gonna
23 reflect that it's Billy Joe Varner that we alleged
24 serious bodily injury.

25 THE COURT: And I'm going to have to obviously

1 change this for the instruction.

2 ATTORNEY ANDERSON: Yes.

3 THE COURT: Did you note that, as well?

4 ATTORNEY PODRAZA: I noted that.

5 THE COURT: Okay. Was there anything else?

6 ATTORNEY ANDERSON: That was all.

7 ATTORNEY PODRAZA: Nothing further.

8 THE COURT: Okay. Thank you.

9 (The sidebar concluded.)

10 THE COURT: All right. Members of the jury, I
11 just want to make one point of clarification.

12 When I was reading to you aggravated assault,
13 attempted serious bodily injury I -- I misspoke when I
14 read one name. So I want to clarify that and make sure
15 there's no confusion.

16 I would note that the names in the information
17 are correct on the verdict slip so that won't change at
18 all.

19 But I told you when I read that specific count,
20 the Commonwealth alleges that the defendant attempted to
21 cause but did not cause serious bodily injury to Joshua
22 Norwood at Count 11 and Billy Joe Varner at Count 12.

23 And, again, that's where I misspoke, because
24 the Commonwealth alleges the defendant attempted to
25 cause but did not cause serious bodily injury to Joshua

1 Norwood at Count 11 and Jeremy Ross-Gates at Count 12.
2 So I just had the wrong name there.

3 So, again, if there is any confusion, the
4 attorneys picked up on that. So they were listening to
5 me. I appreciate that. And if you did, as well. It
6 should be Joshua Norwood and Jeremy Ross-Gates.

7 All right. Is there anything further from
8 counsel?

9 ATTORNEY ANDERSON: No, Your Honor. Thank you.

10 ATTORNEY PODRAZA: No, Your Honor.

11 THE COURT: Then you are now adjourned to begin
12 your deliberations.

13 But before you do so, as to the two alternate
14 jurors, under the law in Pennsylvania you are not
15 permitted to take part in deliberations.

16 On the other hand, I cannot excuse you at this
17 time because if something would happen to one of the
18 original 12 before a verdict is rendered you would then
19 be asked to step in and participate in deliberations.

20 So we're going to have you sequestered in a
21 separate room. I'm going to ask that you please do not
22 in any way discuss this case with each other or with any
23 other individual.

24 All right. You are now excused to begin your
25 deliberations.