IDAHO V. CHAD DAYBELL - JURY INSTRUCTIONS

JUDGE STEVEN W. BOYCE:

All right. Good morning, everyone. We're on the record on KCR 22211623: State of Idaho versus Chad Guy Daybell. The court will note that jurors have all returned and are properly seated at this time. The court has received the juror affirmation forms from each of the 17 jurors. So thank you for continuing to follow the courts admonishing instruction each day as we recess.

At this time, I'll just outline the proceedings for this morning. The parties have now concluded with the submission of evidence in the trial. The court is going to read you additional jury instructions this morning. After the instructions have been read, then the parties will make their closing arguments beginning with the state.

Addressing the jurors now, each of you has been provided a copy of the instructions the court will be reading. Your copies have a watermarked copy logo on each page. With those copies, you may follow along with the court if you wish. You're not required to as I read the instructions. You're also allowed to make notations if you'd like on your copies of the instructions. However, there will be one actual original set of instructions and I would have those included in your deliberations.

The court will note that in the beginning of this trial, instructions 1 through 12 were already previously read to the jurors. I'm not going to reread all of those instructions, but there are a few of those I will reread. And so at this time, I'll begin with the reading of certain instructions and once I've concluded the reading, then again, the closing arguments will commence beginning with the state.

So the first instruction I'm going to read is instruction number three. Noting this is one previously read to you.

Instruction three reads as follows:

The defendant Chad Guy Daybell has been charged in the amended indictment with certain counts of entering into a conspiracy with Lori Vallow Daybell and or Alex Cox (deceased) and or other co-conspirators both known and unknown. The crime of conspiracy involves an agreement by two or more persons to commit a crime. You must only consider the evidence against the defendant Chad Guy Daybell in this case and should not speculate as to any other case or legal proceedings involving the alleged co-conspirators. You must remember that the defendant Chad Guy Daybell has the presumption of innocence and you must consider his guilt or innocence based solely on the evidence provided in this case.

The next instruction I'm going to read is instruction number five.

Under our law and system of justice, the defendant is presumed to be innocent. The presumption of innocence means two things:

First, the state has the burden of proving the defendant guilty. The state has that burden throughout the trial. The defendant is never required to prove his innocence nor does the defendant ever have to produce any evidence at all.

Second, the state must prove the alleged crime beyond a reasonable doubt. A reasonable doubt is not a mere possible or imaginary doubt. It is a doubt based on reason and common sense. It may arise from a careful and impartial consideration of all the evidence or from lack of evidence.

If after considering all of the evidence you have a reasonable doubt about the defendant's guilt, you must find the defendant not guilty.

Instruction number six.

A defendant in a criminal trial has a constitutional right not to be compelled to testify. The decision whether to testify is left to the defendant acting with the advice and assistance of the defendant's lawyer. You must not draw any inference of guilt from the fact that the defendant may not testify nor should this fact be discussed by you or enter into your deliberations in any way.

The next instruction I'm going to read, I'm going to go through the ones previously read and move up to instruction number 13. That's on page 16 of your packet.

Instruction number 13.

You have now heard all the evidence in the case. My duty is to instruct you as to the law. You must follow all the rules as I explain them to you. You may not follow some and ignore others. Even if you disagree or don't understand the reasons for some of the rules, you are bound to follow them. If anyone states a rule of law different from any I tell you, it is *my* instruction that you must follow.

Instruction number 14.

As members of the jury, it is your duty to decide what the facts are and to apply those facts to the law that I have given you. You are to decide the facts from all the evidence presented in this case.

The evidence you are to consider consists of:

1. sworn testimony of witnesses
2. exhibits which have been admitted into evidence, and
3. any facts to which the parties have stipulated.

Certain things you have heard or seen are not evidence, including:

1. arguments and statements by lawyers.
    a. The lawyers are not witnesses. What they say in their opening statements, closing arguments, and at other times is included to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, follow your memory.
2. testimony and or questions that may have been excluded or stricken or which you have been instructed to disregard.
3. anything you may have seen or heard when the court was not in session.

Instruction number 15.

Each count charges a separate and distinct offense. You must decide each count separately on the evidence and the law that applies to it, uninfluenced by your decision as to any other count. The defendant may be found guilty or not guilty on any or all of the offenses charged.

Instruction number 16.

During the course of this trial, evidence has been introduced for the purpose of showing the defendant or an alleged co-conspirator committed acts other than that for which the defendant is on trial. Such evidence, if believed, is not to be considered by you to prove the defendant's character or that the defendant has a disposition to commit crimes. Rather, such evidence may be considered by you only for the limited purpose of proving the defendant's motive, opportunity, intent, plan, or absence of mistake or accident.

Instruction number 17.

Certain evidence admitted for a limited purpose. At the time this evidence was admitted, you were admonished that it could not be considered by you for any purpose other than the limited purpose for which it was admitted. This includes those exhibits admitted for demonstrative or illustrative purposes only. Do not consider such evidence for any purpose except the limited purpose for which it was admitted.

The following exhibits were admitted only as demonstrative or illustrative exhibits:

- State’s Exhibits 4, 10A, 30, 31, 62, 69, 76, 84, 85, 86, 111, 112, 113, 114, 115, 116, 117, 179, 182A, 182B, 296, and 303.
- Defense's exhibit 138.

These exhibits are available for your review during your deliberations upon your request. Please advise the bailiff by written note of any such request.

Instruction number 18.

The law makes no distinction between a person who directly participates in the acts constituting a crime and a person who, either before or during its commission, intentionally aids, assists, facilitates, promotes, encourages, counsels, solicits, invites, helps, or hires another to commit a crime with intent to promote or assist in its commission. Both can be found guilty of the crime, mere presence at, acquiescence in, or silent consent to the planning or commission of a crime is not sufficient to make one an accomplice.

Instruction number 19.

An act is willful or done willfully when done on purpose. One can act willfully without intending to violate the law, to injure another, or to acquire an advantage.

Instruction number 20.

The crime of conspiracy as alleged in counts one and three of the amended indictment involves an agreement by two or more persons to commit the crimes of first-degree murder and grand theft by deception. The crime of conspiracy as alleged in count five of the amended indictment involves an agreement by two or more persons to commit the crime of first-degree murder. Criminal conspiracy is defined as two or more persons combining or conspiring to commit any crime or offense prescribed by the laws of the state of Idaho and one or more of such persons does any act to affect the object of the combination or conspiracy. Conspirators need not agree upon every detail. The agreement may be established in any manner sufficient to show an understanding of the parties to the agreement. It may be shown by evidence of an oral or written agreement or may be implied by the conduct of the parties.

Instruction number 21.

Before I continue, thank you. All of the parties to a conspiracy need not enter into the agreement at the same time. A person who later joins an already formed conspiracy with knowledge of its unlawful purpose is a party to the conspiracy.

Instruction number 22.

Murder is the killing of a human being with malice aforethought.

Instruction number 23.

Malice may be expressed or implied. Malice is expressed when there is manifested a deliberate intention unlawfully to kill a human being. Malice is implied when:

1. the killing resulted from an intentional act,
2. the natural consequences of the act are dangerous to human life, and
3. the act was deliberately performed with knowledge of the danger to and with the conscious disregard for human life.

When it is shown that a killing resulted from the intentional doing of an act with express or implied malice, no other mental state need be shown to establish the mental state of malice aforethought. The mental state constituting malice aforethought does not necessarily require any ill will or hatred of the person killed. The word aforethought does not imply deliberation or the lapse of time. It only means that the malice must proceed rather than follow the act.

Instruction number 24.

To obtain property means to bring about a transfer of an interest in or the possession of the property.

Instruction number 25.

An owner of property is any person who has a right to possession of such property superior to that of the defendant.

Instruction number 26.

Person means an individual, corporation, association, a public or private corporation, city or other municipality, county, state agency, the state of Idaho, federal agency or United States of America.

Instruction number 27.

Property means anything of value including labor or services.

Instruction number 28.

A person steals property and commits theft when with intent to deprive another of property or appropriate the same to the person or to a third party, such person willfully takes, obtains or withholds such property from an owner thereof.

Instruction number 29.

In order for the defendant to be guilty of conspiracy to commit first degree murder and grand theft by deception as alleged in count one of the amended indictment, the state must prove each of the following:

1. on or between the dates of October 26, 2018 and continuing until January 15, 2020

2. in the state of Idaho
3. the defendant Chad Guy Daybell with Lori Norene Vallow and or Alex Cox (deceased) and or other co-conspirators both known and unknown agreed
4. to commit the crimes of murder in the first degree of Tylee Ryan and grand theft by deception,
5. the defendant intended that the crimes would be committed,
6. one of the parties to the agreement performed at least one of the following acts:
    a. on or between October 26, 2018 and June 9, 2020 Chad Guy Daybell and Lori Norene Vallow did endorse and espouse religious beliefs for the purpose of encouraging and or justifying the homicide of Tylee Ryan.
    b. on or about August 16, 2019 Lori Norene Vallow did change the deposit of Tylee Ryan's social security benefits from Tylee Ryan's JP Morgan Chase account to deposit money directly into Lori Norene Vallow's personal BBVA account.
    c. on or about September 1, 2019 Lori Norene Vallow did move from Chandler, Arizona to Rexburg, Idaho with Alex Cox, Tylee Ryan and Joshua Jaxon Vallow here and after JJ Vallow.
    d. on or about September 8, 2019 Chad Guy Daybell googled SSW Wind and visited a website entitled What is the definition of SSW Wind direction?
    e. on or about September 9, 2019 Alex Cox did go to 565 Pioneer Road, apartment 175 Rexburg, Idaho.
    f. on or between September 9, 2019 and February 1, 2020 Lori Norene Vallow failed or refused to contact the SocialSecurity Administration as required by law to inform the Social Security Administration of Tylee Ryan's death.
    g. on or between September 25, 2019 and January 22, 2020 Lori Norene Vallow did wrongfully continue to collect five monthly social security survivor benefits on behalf of Tylee Ryan. Seven and such act or acts were done for the purpose of carrying out the agreement.

If any of the above seven elements have not been proven beyond a reasonable doubt, then you must find the defendant not guilty. If each of the above seven elements have been proven beyond a reasonable doubt, you must find the defendant guilty.

Instruction number 30.

In order for the defendant to be guilty of first degree murder as alleged in count two of the amended indictment, the state must prove each of the following:

1. on or between the 8th and 9th of September, 2019
2. in the state of Idaho
3. the defendant Chad Guy Daybell engaged in conduct or did aid, abet, advise and encourage another to engage in conduct which caused the death of Tylee Ryan
4. with malice aforethought and five, the murder was a willful, deliberate and premeditated killing.

Premeditation means to consider beforehand whether to kill or not to kill and then decide to kill. There does not have to be any appreciable period of time during which the decision to kill was considered as long as it was reflected upon before the decision was made. A mere unconsidered and rash impulse, even though it includes an intent to kill, is not premeditation.

Aiding and abetting is defined as follows: All persons who participate in a crime either before or during its commission by intentionally aiding, abetting, advising or counseling another to commit the crime with intent to promote or assist in its commission are guilty of the crime. All such participants are considered principals in the commission of the crime.

The participation of each defendant in the crime must be proved beyond a reasonable doubt.

If you find the state has failed to prove beyond a reasonable doubt any of the elements, one through four, above or failed to prove any of the circumstances listed in element five, you must find the defendant not guilty of first-degree murder.

If you find that elements one through four above have been proven beyond a reasonable doubt and you unanimously agree that the state has proven any of the above circumstances under element five beyond a reasonable doubt, you must find the defendant guilty of first-degree murder.

Instruction number 31.

In order for the defendant to be guilty of conspiracy to commit first-degree murder and grand theft by deception as alleged in count three of the amended indictment, the state must prove each of the following:

1. on or between the dates of October 26, 2018 and continuing until January 15, 2020
2. in the state of Idaho
3. the defendant Chad Daybell, Lori Norene Vallow and or Alex Cox (deceased) and or other co-conspirators both known and unknown agreed
4. to commit the crimes of murder in the first degree of Joshua Jaxon Vallow and grand theft by deception,
5. the defendant intended that the crimes would be committed,
6. one of the parties to the agreement performed at least one of the following overt acts
    a. on or between October 26, 2018 and June 9, 2020 Chad Guy Daybell and Lori Norene Vallow did endorse and espouse religious beliefs for the purpose of engaging, I'm sorry, encouraging and or justifying the homicide of JJ Vallow.
    b. on or about September 1, 2019 Lori Norene Vallow did move from Chandler, Arizona to Rexburg, Idaho with Alex Cox, Tylee Ryan and Joshua Jaxon, JJ Vallow.
    c. on or about September 23, 2019 Alex Cox did take possession of JJ Vallow.
    d. on or about November 26, 2019 Lori Norene Vallow provided a fake and or misleading physical location of JJ Vallow to law enforcement during a lawful investigation.

e. on or between September 23, 2019 and February 1, 2020 Lori Norene Vallow failed or refused to contact the Social Security Administration as required by law to inform the Social Security Administration of JJ Vallow's death.
f. on or between September 9, 2019 and February 1, 2020 Lori Norene Vallow did wrongfully continue to collect four monthly Social Security survivor benefits on behalf of JJ Vallow and four monthly Social Security child and care payments.

7. and such act or acts were done for the purpose of carrying out the agreement.

If any of the above seven elements have not been proven beyond a reasonable doubt, then you must find the defendant not guilty.

If each of the above seven elements have been proven beyond a reasonable doubt, you must find the defendant guilty.

Instruction number 32.

Count four of the amended indictment contains a clerical error in that “on or between the eighth and ninth day of September 2019” should instead state:”on or between the 22nd and 23rd day of September 2019”. You may consider the dates on or between the 22nd and 23rd day of September 2019 in your deliberations regarding count four.

Instruction number 33.

In order for the defendant to be guilty of first degree murder as alleged in count four of the amended indictment, the state must prove each of the following:

1. on or between the 22nd and 23rd day of September 2019
2. in the state of Idaho
3. the defendant Chad Guy Daybell engaged in conduct or did aid abet advise and encourage another to engage in conduct which caused the death of Joshua Jaxon JJ Vallow
4. with malice aforethought
5. the murder was a willful deliberate and premeditated killing.

Pre-meditation means to consider beforehand whether to kill or not to kill and then decide to kill. There does not have to be any appreciable period of time during which the decision to kill was considered as long as it was reflected upon before the decision was made. A mere unconsidered and rash impulse even though it includes an intent to kill is not premeditation.

Aiding and abetting is defined as follows: All persons who participate in a crime either before or during its commission by intentionally aiding, abetting, advising or counseling another to commit the crime with intent to promote or assist in its commission are guilty of the crime.

All such participants are considered principals in the commission of the crime. The participation of each defendant in the crime must be proved beyond a reasonable doubt.

If you find the state has failed to prove beyond a reasonable doubt any of the elements one through four above or failed to prove any of the circumstances listed in element five you must find the defendant not guilty of first degree murder.

If you find the elements one through four above have been proven beyond a reasonable doubt and you unanimously agree that the state has proven any of the above circumstances under element five beyond a reasonable doubt you must find the defendant guilty of first degree murder.

Instruction number 34.

In order for the defendant to be guilty of conspiracy to commit first degree murder as alleged in count five of the amended indictment the state must prove each of the following:

1. on or between the dates of October 26, 2018 to January 15, 2020
2. in the state of Idaho
3. the defendant Chad Guy Daybell, Lori Norene Vallow and or Alex Cox (deceased) and or other co-conspirators both known and unknown agreed
4. to commit the crime of murder in the first degree of Tamara “Tammy” Daybell,
5. the defendant intended that the crime would be committed,
6. one of the parties to the agreement performed at least one of the following acts:
    a. on or about or between the dates of October 26, 2018 and June 9, 2020 Chad Guy Daybell and Lori Norene Vallow did encourage and espouse religious beliefs for the purpose of justifying and or encouraging the homicide of Tamara “"Tammy"” Daybell.
    b. on or about September 1, 2019, Lori Norene Vallow Daybell did move to Rexburg, Idaho with Alex Cox, Tylee Ryan and Joshua Jaxon here and after JJ Vallow.
    c. on or about July 30, 2019, Chad and Lori sent text messages to each other regarding death percentages for "Tammy" and JJ.
    d. Chad Daybell obtained a burner phone on September 18, 2019.
    e. Alex Cox obtained a burner phone on October 9, 2019.
    f. Chad Guy Daybell and Lori Norene Vallow Daybell sent text messages to each other about Tamara "Tammy" Daybell being in limbo and "Tammy" being possessed by a spirit named Viola.
    g. on September 8, 2019, Chad Guy Daybell signed an application along with Tamara "Tammy" Daybell to increase her life map insurance to the maximum allowed under her policy.
    h. Alex Cox attempted to shoot Tamara "Tammy" Daybell on October 9, 2019.
    i. Alex Cox conducted multiple internet searches between the dates of October 8, 2019 and October 12, 2019, including searches related to Grendel drop and shooting through a Dodge Dakota.
    j. Alex Cox went to a gun range in the month before October 9, 2019 when the attempted shooting of Tamara "Tammy" Daybell takes place.

k. Alex Cox traveled from Sportsman's Warehouse to the vicinity of the Daybell residence on October 9, 2019.
l. Alex Cox was in the church parking lot approximately 2.5 miles from the Daybell residence on the night of October 18, 2019.

7. and such act or acts was done for the purpose of carrying out the agreement.

If any of the above seven elements have not been proven beyond a reasonable doubt, then you must find the defendant not guilty.

If each of the above seven elements have been proven beyond a reasonable doubt, you must find the defendant guilty.

Instruction number 35.

In order for the defendant to be guilty of insurance fraud and count 7 of the amended indictment, the state must prove each of the following:

1. on or about October 19, 2019 to October 30, 2019
2. in the state of Idaho
3. the defendant Chad Guy Daybell
4. with the intent to defraud or deceive Life Map Insurance Company for the purpose of obtaining money or benefit
5. made a statement to Life Map Insurance Company knowing that such statement contained false, incomplete, or misleading information.

If you find that the state has failed to prove beyond a reasonable doubt any of the elements 1 through 5, you must find the defendant not guilty of insurance fraud and count 7 of the amended indictment.

If you find that elements 1 through 5 above have been proven beyond a reasonable doubt, you must find the defendant guilty of insurance fraud.

Instruction number 36.

In order for the defendant to be guilty of insurance fraud and count 9 of the amended indictment, the state must prove each of the following:

1. on or about October 19, 2019 to October 31, 2019
2. in the state of Idaho
3. the defendant Chad Guy Daybell
4. with the intent to defraud or deceive Primerica Life Insurance Company for the purpose of obtaining money or benefit
5. made a statement to Primerica Life Insurance Company knowing that such statement contained false, incomplete, or misleading information.

If you find that the state has failed to prove beyond a reasonable doubt any of the elements 1 through 5, you must find the defendant not guilty of insurance fraud and count 9 of the amended indictment.

If you find that elements 1 through 5 above have been proven beyond a reasonable doubt, you must find the defendant guilty of insurance fraud.

Instruction number 37.

In this case, you will return a verdict consisting of a series of questions. Although the explanations on the verdict form are self-explanatory, they are part of the instructions to you. I will now read the verdict form to you. It states: we the jury, duly impaneled and sworn to try the above entitled action for our verdict, unanimously answer the questions submitted as follows.

Question number 1.
In regards to count 1 of the amended indictment, is Chad Guy Daybell not guilty or guilty of conspiracy to commit first-degree murder of Tylee Ryan and grand theft by deception?

And then not guilty and guilty options.

Question 2.
In regards to count 2 of the amended indictment, is Chad Guy Daybell not guilty or guilty of first-degree murder of Tylee Ryan, not guilty and guilty options?

Question 3.
In regards to count 3 of the amended indictment, is Chad Guy Daybell not guilty or guilty of conspiracy to commit first-degree murder of Joshua Jaxon Vallow and grand theft by deception, not guilty and guilty options?

Question number 4.
In regards to count 4 of the amended indictment, is Chad Guy Daybell not guilty or guilty of first-degree murder of Joshua Jaxon Vallow? And then there are two options, guilty or not guilty.

Question number 5.
In regards to count 5 of the amended indictment, is Chad Guy Daybell not guilty or guilty of conspiracy to commit first-degree murder of Tamara "Tammy" Daybell, not guilty or guilty option?

Question number 6.
In regards to count 6 of the amended indictment, is Chad Guy Daybell not guilty or guilty of first-degree murder of Tamara "Tammy" Daybell, not guilty and guilty options?

Question number 7.

In regards to count 7 of the amended indictment, is Chad Guy Daybell not guilty or guilty of insurance fraud, not guilty and guilty options?

And then question number 8.
In regards to count 9 of the amended indictment, is Chad Guy Daybell not guilty or guilty of insurance fraud, not guilty or guilty options?

Then there's a place to insert a date and a signature for the presiding officer.

I'll note to the jurors there will be a separate verdict form. This is just the language out of that form, but one original form to be signed by the presiding juror.

Jury instruction number 38.

You have been instructed as to all the rules of law that may be necessary for you to reach a verdict. Whether some of the instructions will apply will depend upon your determination of the facts. You will disregard any instruction which applies to a state of facts which you determine does not exist. You must not conclude from the fact that an instruction has been given that the court is expressing any opinion as to the facts.

Instruction number 39.

The original instructions and exhibits will be with you in the jury room with the exception of exhibits 172, pickaxe and 173, shovel and illustrative or demonstrative exhibits. For safety and security reasons, the tool exhibits may be viewed with the assistance of the bailiff if requested by the jury. The demonstrative or illustrative exhibits may be available as explained in instruction number 17. They are part of the official court record. For this reason, please do not alter them or write or mark on them in any way. Some of the exhibits have been sealed in bags or containers that allow you to view them. Do not open or remove the contents of those exhibits. If you have any questions about the handling or use of exhibits, submit those questions in writing to me through the bailiff. The instructions are numbered for convenience and referring to specific instructions, there may or may not be a gap in the numbering of the instructions. If there is, you should not concern yourselves about such gap.

Instruction number 40.

Upon retiring to the jury room, select one of you as a presiding officer who will preside over your deliberations. It is that person's duty to see that the discussion is orderly, that the issues submitted for your decision are fully and fairly discussed, and that every juror has a chance to express himself or herself upon each question. In this case, your verdict must be unanimous. When you all arrive at a verdict, the presiding officer will sign it and you will return it to open court. Your verdict in this case cannot be arrived at by chance, by lot, or by compromise. If after considering all of the instructions in their entirety and after having fully discussed the evidence before you, the jury determines that it is necessary to communicate with me, you may send a

note by the bailiff. You are not to reveal to me or anyone else how the jury stands until you have reached a verdict or unless you are instructed by me to do so. A verdict form suitable to any conclusion you may reach will be submitted to you with these instructions.

Instruction number 41.

I have outlined for you the rules of law applicable to this case and have told you some of the matters which you may consider in weighing the evidence to determine the facts. In a few minutes, counsel will present their closing remarks to you and then you will retire to the jury room for your deliberations. The arguments and statements of the attorneys are not evidence. If you remember the facts differently from the way the attorneys have stated them, you should base your decision on what you remember. The attitude and conduct of jurors at the beginning of your deliberations are important. It is rarely productive at the outset for you to make an emphatic expression of your opinion on the case or to state how you intend to vote. When you do that at the beginning, your sense of pride may be aroused and you may hesitate to change your position even if shown that it is wrong. Remember that you are not partisans or advocates but are judges. For you as for me, there can be no triumph except in the ascertainment and declaration of the truth. As jurors, you have a duty to consult with one another and to deliberate before making your individual decisions. You may fully and fairly discuss among yourselves all of the evidence you have seen and heard in this courtroom about the case together with the law that relates to this case as contained in these instructions. During your deliberations, you each have a right to re-examine your own views and change your opinion.

You should only do so if you are convinced by fair and honest discussion that your original opinion was incorrect based upon the evidence the jury saw and heard during the trial and the law as given you in these instructions. Consult with one another, consider each other's views and deliberate with the objective of reaching an agreement if you can do so without disturbing your individual judgment. Each of you must decide this case for yourself but you should do so only after a discussion and consideration of the case with your fellow jurors. However, none of you should surrender your honest opinion as to the weight or effect of evidence or as to the innocence or guilt of the defendant because the majority of the jury feels otherwise or for the purpose of returning a unanimous verdict.