INSTRUCTION NO: B

Lee Malvo is presumed to be innocent. You should not assume he is guilty because he has been indicted and is on trial. This presumption of innocence remains with the defendant throughout the trial and is enough to require you to find the defendant not guilty unless and until the Commonwealth proves each and every element of the offense beyond a reasonable doubt. This does not require proof beyond all possible doubt, nor is the Commonwealth required to disprove every conceivable circumstance of innocence. However, suspicion or probability of guilt is not enough for a conviction.

There is no burden on the defendant to produce any evidence.

A reasonable doubt is a doubt based on your sound judgment after a full and impartial consideration of all the evidence in the case.

GRANTED
JMR

INSTRUCTION NO: d

It is not necessary that each element of the offense be proved by direct evidence, for an element may also be proved by circumstantial evidence. You may convict the defendant on circumstantial evidence alone, or on circumstantial evidence combined with other evidence, if you believe from all the evidence that the defendant is guilty beyond a reasonable doubt.

When the Commonwealth relies upon circumstantial evidence, the circumstances proved must be consistent with guilt and inconsistent with innocence. It is not sufficient that the circumstances proved create a suspicion of guilt, however strong, or even a probability of guilt.

The evidence as a whole must exclude every reasonable theory of innocence.

GRANTED
JMR

INSTRUCTION NO. 2

The Court instructs the jury that you are the judges of the facts, the credibility of the witnesses, and the weight of the evidence. You may consider the appearance and manner of the witnesses on the stand, their intelligence, their opportunity for knowing the truth and for having observed the things about which they testified, their interest in the outcome of the case, their bias, and, if any have been shown, their prior inconsistent statements, or whether they have knowingly testified untruthfully as to any material fact in the case.

You may not arbitrarily disregard believable testimony of a witness. However, after you have considered all the evidence in the case, then you may accept or discard all or part of the testimony of a witness as you think proper.

You are entitled to use your common sense in judging any testimony. From these things and all the other circumstances of the case, you may determine which witnesses are more believable and weigh their testimony accordingly.

GRANTED
JMR

INSTRUCTION NO: D

The defendant does not have to testify, and his failure to do so cannot be considered by you.

GRANTED
JMR

INSTRUCTION NO: G

The statements presented to you as having been made by the defendant are submitted for your consideration along with all the other evidence. The weight, value, credibility and reliability of those statements are questions for your determination.

GRANTED
JMA

INSTRUCTION NO. 8

The defendant is charged with the crime of capital murder, that is, the killing during the commission of or attempted commission of an act of terrorism. The Commonwealth must prove beyond a reasonable doubt the following elements of that crime:

1. That Linda Franklin was killed; and
2. That the killing was willful, deliberate and premeditated; and
3. That the killing was with malice; and
4. That the killing occurred during the commission of or attempted commission of an act of terrorism; and
5. That the defendant was a principal in the first degree; or, a principal in the second degree in the killing of Linda Franklin.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt the above elements of the offense as charged, then you shall find the defendant guilty of capital murder and shall not fix the punishment until your verdict has been returned and further evidence is heard by you.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt:

1. That Linda Franklin was killed; and
2. That the killing was willful, deliberate and premeditated; and
3. That the killing was with malice; and
4. That the defendant was a principal in the first degree; or, a principal in the second degree in the killing of Linda Franklin.

GRANTED
JMR

But you do not find that the killing occurred during the commission or attempted commission of an act of terrorism, then you shall find the defendant guilty of first-degree murder and say no more.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either of the above offenses, then you shall find the defendant not guilty.

INSTRUCTION NO. 7

The defendant is charged with the crime of capital murder, that is, the killing of more than one person within a three-year period. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

1. That the defendant killed Linda Franklin; and
2. That the killing was willful, deliberate and premeditated; and
3. That the killing was with malice; and
4. That the defendant participated in the willful, deliberate and premeditated killing of Dean Meyers within a three-year period of the killing of Linda Franklin.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the offense as charged, then you shall find the defendant guilty of capital murder and shall not fix the punishment until your verdict has been returned and further evidence is heard by you.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt:

1. That the defendant participated in the killing of Linda Franklin; and
2. That the killing was willful, deliberate and premeditated; and
3. That the killing was with malice; and
4. That the defendant participated in the willful, deliberate and premeditated killing of Dean Meyers within a three-year period of the killing of Linda Franklin,

But if you find that the defendant was a principal in the second degree to the killing of Linda Franklin and not a principal in the first degree, as defined in another instruction, and you find that the killing was malicious, then you shall find the defendant guilty of first degree murder and say no more.

If you find from the evidence that the Commonwealth proved beyond a reasonable doubt:

GRANTED
JMR

1. That the defendant participated in the killing of Linda Franklin; and
2. That the killing was willful, deliberate and premeditated; and
3. That the killing was with malice.

But you find that the Commonwealth did not prove the defendant killed more than one person in a three-year period then you shall find the defendant guilty of first degree murder and say no more.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either of the above offenses, then you shall find the defendant not guilty.

INSTRUCTION NO. 3

"Willful, deliberate, and premeditated" means a specific intent to kill, adopted at some time before the killing, but which need not exist for any particular length of time.

GRANTED
JMR

INSTRUCTION NO: F

Malice is that state of mind which results in the intentional doing of a wrongful act to another without legal excuse or justification, at a time when the mind of the actor is under the control of reason. Malice may result from any unlawful or unjustifiable motive including anger, hatred or revenge. Malice may be inferred from any deliberate willful and cruel act against another, however sudden.

GRANTED
JMR

INSTRUCTION NO. 9

An act of terrorism is any murder committed with the intent to influence the conduct or activities of the government of the United States, a state or locality through intimidation.

GRANTED
JMR

INSTRUCTION NO. 4

A principal in the first degree is the person who actually commits the crime. A principal in the second degree is a person who is present, aiding and abetting, by helping in some way in the commission of the crime. Presence and consent alone are not sufficient to constitute aiding and abetting. It must be shown that the defendant intended his words, gestures, signals or actions to in some way encourage, advise, or urge, or in some way help the person committing the crime to commit it.

GRANTED
JMR

INSTRUCTION NO. 5

You may infer malice from the deliberate use of a deadly weapon unless, from all the evidence, you have a reasonable doubt as to whether malice existed.

A "deadly weapon" is any object or instrument, not part of the human body, that is likely to cause death or great bodily injury because of the manner, and under the circumstances in which it is used.

GRANTED
JMA

INSTRUCTION NO. 6

You may infer that every person intends the natural and probable consequences of his acts.

GRANTED
JMR

INSTRUCTION NO: 7

You have been instructed on more than one grade of homicide and if you have a reasonable doubt as to the grade of the offense, then you must resolve that doubt in favor of the defendant, and find him guilty of the lesser offense.

For example, if you have a reasonable doubt as to whether he is guilty of capital murder or first degree murder, you shall find him guilty of first degree murder.

If you have a reasonable doubt as to whether he is guilty at all, you shall find him not guilty.

GRANTED
JMR

INSTRUCTION NO. 10

The defendant is charged with the crime of using a firearm while committing or attempting to commit capital murder. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

1. That the defendant used a firearm; and
2. That the use was while committing or attempting to commit capital murder or first degree murder.

If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt each of the above elements of the offense as charged, then you shall find the defendant guilty and say no more.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt either or both elements of the offense, then you shall find the defendant not guilty.

GRANTED
JMR

INSTRUCTION NO: ~~5~~ 5

The defendant is presumed to be sane at the time of the crime. In order to be found not guilty on the ground of insanity, the defendant must prove by the greater weight of the evidence that he was insane when the crime was committed.

GRANTED
JMR

INSTRUCTION NO: T

If you find from the greater weight of the evidence that at the time of the offense the defendant was insane, then you must find him not guilty by reason of insanity even though you find that he committed the offense.

The defendant was insane if, because of a mental disease or defect, he did not understand the nature, character and consequences of his act or he was unable to distinguish right from wrong.

GRANTED
JMR

INSTRUCTION NO: V

It is your responsibility to decide whether the defendant was insane at the time the crime was committed. You are not required to accept the opinion of any expert witness as to whether the defendant was sane or insane. You should give the testimony such consideration as you feel it is entitled along with the other evidence in the case.

GRANTED
JMR

INSTRUCTION NO: 11

Under the charge of capital murder in the commission of or attempted commission of an act of terrorism, you may return any one of the following verdicts, which verdict must be unanimous:

(1) Not guilty;

(2) Not guilty by reason of insanity;

(3) Guilty of capital murder;

(4) Guilty of murder in the first degree.

GRANTED
JMR

INSTRUCTION NO: HH

Under the charge of capital murder (killing of more than one person within a three-year period), you may return any one of the following verdicts, which verdict must be unanimous:

(1) Not guilty;

(2) Not guilty by reason of insanity;

(3) Guilty of capital murder;

(4) Guilty of murder in the first degree;

GRANTED
JMR

INSTRUCTION NO: 11

Under the charge of use of a firearm in the commission of murder, you may return any one of the following verdicts, which verdict must be unanimous:

(1) Not guilty;

(2) Not guilty by reason of insanity;

(3) Guilty of use of a firearm in the commission of murder.

GRANTED
JMR