

1999 WL 33979974 (Ariz.Super.) (Jury Instruction)
Superior Court of Arizona.
Cochise County

State of Arizona, Plaintiff,
v.
Janice L. WILSON, Defendant.

No. CR-98-000550.
May 25, 1999.

State's Requested Jury Instructions

Assigned to the Honorable Paul Banales.

The State of Arizona by the Attorney General Janet Napolitano, through her assistant, SYLVIA E. GOODWIN, submits the following jury instructions.

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 1

Duty of Jury

It is your duty as a juror to decide this case by applying these jury instructions to the facts as you determine them. You must follow these jury instructions. They are the rules you will use to decide this case.

It is your duty to determine what the facts are in the case by determining what actually happened. Determine the facts only from the evidence produced in court. When I say "evidence," I mean the testimony of witnesses and the exhibits introduced in court. You should not guess about any fact. You must not be influenced by sympathy or prejudice. You must not be concerned with any opinion that you feel I have about the facts. You, as jurors, are the sole judges of what happened.

You must consider all these instructions. Do not pick out one instruction, or part of one, and ignore the others. As you determine the facts, however, you may find that some instructions no longer apply. You must then consider the instructions that do apply, together with the facts as you have determined them.

RAJI, Standard Criminal No. 1 (Revised 1996).

GIVEN:

REFUSED: Not Supported by the Evidence

X Already Covered

..... Not Applicable Arizona Law

..... Other

MODIFIED:

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 2

Lawyers' Comments Are Not Evidence

In their opening statements and closing arguments, the lawyers have talked to you about the law and the evidence. What the lawyers said is not evidence, but it may help you understand the law and the evidence.

RAJI, Standard Criminal No. 2 (Revised 1996).

GIVEN:

REFUSED: Not Supported by the Evidence
 X Already Covered
 Not Applicable Arizona Law
 Other

MODIFIED:

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 3

Evidence to be Considered

You are to determine what the facts in the case are from the evidence produced in court. If the court sustained an objection to a lawyer's question, you must disregard it and any answer given.

Any testimony stricken from the court record must not be considered.

RAJI, Standard Criminal No. 4 (Revised 1996).

GIVEN:

REFUSED: Not Supported by the Evidence
 X Already Covered
 Not Applicable Arizona Law
 Other

MODIFIED:

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 4

Presumption of Innocence - Reasonable Doubt

The State has the burden of proving the defendant guilty beyond a reasonable doubt. In civil cases, it is only necessary to prove that a fact is more likely true than not true, or that its truth is highly probable. In criminal cases such as this, the State's proof must be more powerful than that. It must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find the defendant guilty. If, on the other hand, you think there is a real possibility that the defendant is not guilty, you must give him/her the benefit of the doubt and find the defendant not guilty.

Source: *State v. Portillo*, 182 Ariz. 592, 898 P.2d 970 (1995).

GIVEN: X

REFUSED: Not Supported by the Evidence
..... Already Covered
..... Not Applicable Arizona Law
..... Other

MODIFIED:

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 5

Jury Not to Consider Penalty

You must decide whether the defendant is guilty or not guilty by determining what the facts in the case are and applying these jury instructions. You must not consider the possible punishment when deciding on guilt; punishment is left to the judge.

RAJI, Standard Criminal No. 7 (Revised 1996).

GIVEN:

REFUSED: Not Supported by the Evidence
X Already Covered
..... Not Applicable Arizona Law
..... Other

MODIFIED:

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 6

Evidence of Any Kind

The State must prove guilt beyond a reasonable doubt with its own evidence. The defendant is not required to produce evidence of any kind. The decision on whether to produce any evidence is left to the defendant, acting with the advice of an attorney. The defendant's failure to produce any evidence is not evidence of guilt.

RAJI, Standard Criminal No. 16 (Added 1996).

GIVEN:
REFUSED: X Not Supported by the Evidence
 Already Covered
 Not Applicable Arizona Law
 Other
MODIFIED:

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 7

Credibility of Witnesses

In determining the evidence, you must decide whether to believe the witnesses and their testimony. As you do this, you should consider the testimony in light of all the other evidence in the case. This means you may consider such things as the witnesses' ability and opportunity to observe, their manner and memory while testifying, any motive or prejudice they might have, and any inconsistent statements they may have made.

RAJI, Standard Criminal No. 18 (Revised 1996).

GIVEN:
REFUSED: Not Supported by the Evidence
 X Already Covered
 Not Applicable Arizona Law
 Other
MODIFIED:

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 8

Indictment/Information Is Not Evidence

The State has charged the defendant with Fraud Scheme and Financial Exploitation of a Vulnerable Adult. A charge is not evidence against the defendant. You must not think that the defendant is guilty just because of a charge. The defendant has pled "not guilty." This plea of "not guilty" means that the State must prove each element of the charge(s) beyond a reasonable doubt.

RAJI, Standard Criminal No. 21 (Revised 1996).

Source: MARJI (Criminal) No. 201.

GIVEN:
REFUSED: Not Supported by the Evidence
..... Already Covered
..... Not Applicable Arizona Law
..... Other
MODIFIED: X

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 9

Direct and Circumstantial Evidence

Evidence may be direct or circumstantial. Direct evidence is the testimony of a witness who saw, heard, or otherwise observed an event. Circumstantial evidence is the proof of a fact or facts from which you may find another fact. The law makes no distinction between direct and circumstantial evidence. It is for you to determine the importance to be given to the evidence, regardless of whether it is direct or circumstantial.

RAJI, Standard Criminal No. 24 (Revised 1996).

GIVEN:
REFUSED: Not Supported by the Evidence
X Already Covered
..... Not Applicable Arizona Law
..... Other
MODIFIED:

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 10

””Knowingly”” means that a defendant acted with awareness of, or belief in, the existence of conduct or circumstances constituting an offense. It does not mean that a defendant must have known that the conduct is forbidden by law.

RAJI, Standard Criminal No. 28 (Added 1996).

Source: [A.R.S. § 13-105\(6\)\(b\)](#).

GIVEN:
REFUSED: Not Supported by the Evidence
 X Already Covered
 Not Applicable Arizona Law
 Other
MODIFIED:

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 11

Testimony of Law Enforcement Officers

The testimony of a law enforcement officer is not entitled to any greater or lesser importance or believability merely because of the fact that the witness is a law enforcement officer. You are to consider the testimony of a police officer just as you would the testimony of any other witness.

RAJI, Standard Criminal No. 34 (Added 1996).

GIVEN:
REFUSED: Not Supported by the Evidence
 X Already Covered
 Not Applicable Arizona Law
 Other
MODIFIED:

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 12

Defendant's Testimony

You must evaluate the defendant's testimony the same as any witness' testimony.

RAJI, Standard Criminal No. 36 (Added 1996).

GIVEN:
REFUSED: Not Supported by the Evidence
 X Already Covered
 Not Applicable Arizona Law

..... Other

MODIFIED:

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 13

Judicial Notice

The Court may take judicial notice of certain facts or events. When the Court declares it will take judicial notice of some fact or event, the jury must, unless otherwise instructed, accept the Court's declaration as evidence, and regard as proved the fact or event which has been judicially noticed.

Authority: 2 Devitt & Blackmar, FEDERAL JURY PRACTICES AND INSTRUCTIONS, § 71.09 (3rd ed. 1977).

GIVEN:

REFUSED: Not Supported by the Evidence

..... Already Covered

..... Not Applicable Arizona Law

..... Other

MODIFIED: X

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 14

Financial Exploitation of a Vulnerable Adult

The defendant is charged in Count Three and Four of the indictment with commission of the crime of financial exploitation of a vulnerable adult. The crime of financial exploitation of a vulnerable adult requires proof:

(1)A person knowingly takes control of a vulnerable adult's property or assets;

(2)Through deception;

(3)While acting in a position of trust and confidence;

(4)With intent to permanently deprive the vulnerable adult of such property or assets.

Source: [A.R.S. §§ 46-456 \(A\) and \(B\), 13-1802\(C\)](#)

GIVEN:

REFUSED: Not Supported by the Evidence

X Already Covered

..... Not Applicable Arizona Law

..... Other

MODIFIED:

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 15

Definition of Vulnerable Adult

“Vulnerable adult” means an individual who is eighteen years of age or older who is unable to protect himself from exploitation by others because of a physical or mental impairment.

Source: [A.R.S. § 46-451](#)

GIVEN:

REFUSED:

Not Supported by the Evidence

..... Already Covered

..... Not Applicable Arizona Law

..... Other

MODIFIED: X

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 16

Definition of Exploitation

“Exploitation” means the illegal or improper use of an incapacitated or vulnerable adult or his resources for another's profit or advantage.

Source: [A.R.S. § 46-451](#)

GIVEN:

REFUSED:

Not Supported by the Evidence

..... Already Covered

..... Not Applicable Arizona Law

..... Other

MODIFIED: X

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 17

“Deception” means that a person deceives a vulnerable adult by knowingly doing any of the following:

- (a) Creating or confirming a false impression in an vulnerable adult's mind.

- (b) Failing to correct a false impression that the person is responsible for creating or confirming in an incapacitated or vulnerable adult's mind.

- (c) Making a promise to an incapacitated or vulnerable adult that the person does not intend to perform or that the person knows will not or cannot be performed. A person's failure to perform a promise is not by itself sufficient proof that the person did not intend to perform the promise.

- (d) Misrepresenting or concealing a material fact that relates to the terms of a contract or an agreement that the person enters into with the vulnerable adult or that relates to the existing or preexisting condition of any of the property involved in a contract or an agreement.

- (e) Using any material misrepresentation, false pretense or false promise to induce, encourage or solicit an incapacitated or vulnerable adult to enter into a contract or an agreement.

Source: [A.R.S. § 46-456](#)

GIVEN:

REFUSED: Not Supported by the Evidence

..... Already Covered

..... Not Applicable Arizona Law

..... Other

MODIFIED: X

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 18

Definition of Position of Trust

“Position of trust and confidence” means that a person is any of the following:

- (1) One who has assumed a duty to provide care to the vulnerable adult.

- (2) A joint tenant or a tenant in common with an incapacitated or vulnerable adult.

- (3) One who is in a fiduciary relationship with an incapacitated or vulnerable adult.

Source [A.R.S. § 46-456](#)

GIVEN:
REFUSED: Not Supported by the Evidence
..... Already Covered
..... Not Applicable Arizona Law
..... Other
MODIFIED: X

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 19

Deprive Defined

“Deprive” means to withhold the property interest of another either permanently or for so long a time period that a substantial portion of its economic value or usefulness or enjoyment is lost, or to withhold it with intent to restore it only upon payment of reward or other compensation or to transfer or dispose of it so that it is unlikely to be recovered.

Source: [A.R.S. § 13-1801](#)

GIVEN: X
REFUSED: Not Supported by the Evidence
..... Already Covered
..... Not Applicable Arizona Law
..... Other
MODIFIED:

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 20

Fraud Scheme

The defendant is charged in Count One and Two of the indictment with commission of the crime of fraudulent schemes and artifices.

The crime of fraudulent schemes and artifices requires proof:

1. That a plan or scheme existed;
2. That the purpose of such plan or scheme was to defraud others;
3. That, knowing the purpose of the scheme, the defendants, pursuant to the scheme, obtained a benefit.
4. By means of false or fraudulent pretenses, representations, promises or material omissions.

Reliance on the part of any person is not an element of this offense.

Authority: [A.R.S. § 13-2310\(A\)](#); [State v. Winer](#), 126 Ariz. 454, 616 P.2d 914 (App. 1980); [State v. Bridgforth](#), 156 Ariz. 60, 750 P.2d 3 (1988).

GIVEN:
REFUSED: Not Supported by the Evidence
 X Already Covered
 Not Applicable Arizona Law
 Other
MODIFIED:

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 21

A “scheme” or “artifice” to defraud consists of forming a plan or devising some trick to perpetrate a fraud.

Authority: [State v. Suarez](#), 137 Ariz. 368, 670 P.2d 1192 (App. 1983); [State v. Stewart](#), 118 Ariz. 281, 576 P.2d 140 (App. 1978); [State v. Smith](#), 121 Ariz. 106, 588 P.2d 848 (App. 1978).

GIVEN: X
REFUSED: Not Supported by the Evidence
 Already Covered
 Not Applicable Arizona Law
 Other
MODIFIED:

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 22

Fraudulent Defined

Something is fraudulent when it is “reasonably calculated to deceive persons of ordinary prudence and comprehension.” “The fraudulent aspect of the scheme to defraud is measured by a non-technical standard. The statute proscribes conduct lacking in fundamental honesty and fair play in the general and business life of members of society.”

Authority: [State v. Haas](#), 138 Ariz. 413, 423-24, 675 P.2d 673, 677, 683 (1983).

GIVEN:

REFUSED: Not Supported by the Evidence
 Already Covered
 Not Applicable Arizona Law
 X Other

MODIFIED:

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 23

Benefit Defined

""Benefit"" means anything of value or advantage, present or prospective.

Authority: [A.R.S. § 13-105\(2\)](#).

GIVEN: X
REFUSED: Not Supported by the Evidence
 Already Covered
 Not Applicable Arizona Law
 Other
MODIFIED:

- | | | | | | |
|---|---|---|---|---|-------------------------------------------------------------|
| 0 | 0 | 0 | 0 | 0 | 11.035 MANSLAUGHTER OF UNBORN CHILD |
| 0 | 0 | 0 | 0 | 0 | 11.04 SECOND DEGREE MURDER |
| 0 | 0 | 0 | 0 | 0 | 11.051 FIRST DEGREE MURDER BY PREMEDITATION |
| 0 | 0 | 0 | 0 | 0 | 11.052 FIRST DEGREE FELONY MURDER |
| 0 | 0 | 0 | 0 | 0 | 11.06 HOMICIDE - POSSIBLE VERDICTS |
| 0 | 0 | 0 | 0 | 0 | 12.01 ENDANGERMENT |
| 0 | 0 | 0 | 0 | 0 | 12.02 THREATENING OR INTIMIDATING |
| 0 | 0 | 0 | 0 | 0 | 12.04 AGGRAVATED ASSAULT - GENERAL |
| 0 | 0 | 0 | 0 | 0 | 12.046 AGGRAVATED ASSAULT UPON TEACHER OR SCHOOL EMPLOYEE |
| 0 | 0 | 0 | 0 | 0 | 12.049 AGGRAVATED ASSAULT - SAMPLE FORMS OF GUILTY VERDICTS |
| 0 | 0 | 0 | 0 | 0 | 12.05 UNLAWFULLY ADMINISTERING LIQUOR OR DRUG |
| 0 | 0 | 0 | 0 | 0 | 12.06 DANGEROUS OR DEADLY ASSAULT BY A PRISONER |

0	0	0	0	0	13.02 CUSTODIAL INTERFERENCE
0	0	0	0	0	13.031 UNLAWFUL IMPRISONMENT
0	0	0	0	0	13.032 UNLAWFUL IMPRISONMENT - DEFENSE - RELATIVE
0	0	0	0	0	13.04 KIDNAPPING
0	0	0	0	0	14.02 INDECENT EXPOSURE
0	0	0	0	0	14.03 PUBLIC SEXUAL INDECENCY
0	0	0	0	0	14.04 SEXUAL ABUSE
0	0	0	0	0	14.051 SEXUAL CONDUCT WITH A MINOR UNDER AGE FIFTEEN
0	0	0	0	0	14.052 SEXUAL CONDUCT WITH A MINOR UNDER AGE FIFTEEN- MINOR THE ACTOR
0	0	0	0	0	14.053 SEXUAL CONDUCT WITH MINOR - REASONABLE MISTAKE AS TO AGE A DEFENSE
0	0	0	0	0	14.054 SEXUAL CONDUCT WITH MINOR - BELIEF OF AGE NO DEFENSE
0	0	0	0	0	14.055 SEXUAL CONDUCT WITH MINOR - FORMS OF GUILTY VERDICT
0	0	0	0	0	14.06 SEXUAL ASSAULT
0	0	0	0	0	14.0601 SEXUAL ASSAULT OF A SPOUSE
0	0	0	0	0	14.07 DEFENSE TO SEXUAL ABUSE AND SEXUAL CONDUCT WITH A MINOR
0	0	0	0	0	14.10 MOLESTATION OF A CHILD
0	0	0	0	0	14.101 PREVIOUS SEXUAL ACTS
0	0	0	0	0	14.102 TOUCHING ON CLOTHING
0	0	0	0	0	14.103 PRIVATE PARTS DEFINED
0	0	0	0	0	14.104 PRIVATE PARTS DEFINED
0	0	0	0	0	14.11 SODOMY (CRIME AGAINST NATURE)

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 24

A defendant acts knowingly with respect to the charge of fraudulent schemes and artifices if he makes a statement known to be untrue, or made with reckless indifference as to its truth or falsity and made or caused to be made with intent to deceive.

“ “[K]nowledge of the actual falsity of any particular representation made to promote the scheme is not required to convict. Provided the intent is to deceive, it is immaterial whether the individual knew the representation was false or simply did not care and was indifferent to the truth. ‘

Authority: *State v. Haas*, 138 Ariz. 413; 424, 675 P.2d 673 (1983); *United States v. Mandel*, 414 F.Supp. 997, 1006 (1976), supplemented 415 F.Supp. 1025; *United States v. New South Farm and Home Company*, 241 U.S. 64, 71, 36 S.Ct. 505, 507-08,

60 L.Ed. 890, 896 (1916); *United States v. Andreadis*, 366 F.2d 423, 430 (2nd Cir. 1966), *cert. denied*, 385 U.S. 1001, 87 S.Ct. 703, 17 L.Ed.2d 972, 975 (10th Cir. 1966).

GIVEN:
REFUSED: Not Supported by the Evidence
..... Already Covered
..... Not Applicable Arizona Law
X Other
MODIFIED:

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 25

Definition of Pretense

A “pretense” is something advanced or displayed for the purpose of concealing the reality, and can be considered a device to gain an advantage by deception. The term “fraudulent pretense” includes intentional misleading by hiding or concealing the truth.

Authority: *State v. Haas*, 138 Ariz. 413, 423-24, 675 P.2d 673, 677, 683 (1983).

GIVEN:
REFUSED: Not Supported by the Evidence
..... Already Covered
..... Not Applicable Arizona Law
X Other
MODIFIED:

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 26

False or fraudulent representations encompass deceitful statements, half-truths, omissions or concealments of material facts. Even acts that are innocent in and of themselves may be fraudulent in combination if they are part of an overall scheme to defraud or mislead.

Authority: *State v. Haas*, 138 Ariz. 413, 675 P.2d 673, (1983); *State v. Coddington*, 135 Ariz. 480, 662 P.2d 155 (App. 1983); *United States v. Mandel*, 414 F.Supp. 997 (D.C. Md. 1976), supplemented 415 F.Supp. 1025.

GIVEN:
REFUSED: Not Supported by the Evidence

- Already Covered
- Not Applicable Arizona Law
- X Other

MODIFIED:

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 27

In a scheme to defraud, deception is not confined to a direct misstatement of fact. Not words alone, but their arrangement, the manner of their display, and the circumstances in which they are used may create an appearance which is false and deceptive even though the words themselves fall short of being misstatements.

Authority: *Lustiger v. United States*, 386 F.2d 132 (9th Cir. 1967); see also *Gusow v. United States*, 347 F.2d 755, 756 (10th Cir.), cert. denied 382 U.S. 906 (1965).

- GIVEN:
 - REFUSED:
 - Not Supported by the Evidence
 - Already Covered
 - Not Applicable Arizona Law
 - X Other
- MODIFIED:

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 28

Material Omission

In determining whether or not a material omission has occurred, a matter is material if it is one to which a reasonable person would attach importance in determining his choice of action in the transaction in question.

Authority: *Lynn v. Taylor*, 7 Kan.App. 369, 371, 642 P.2d 131, 134-35 (1982); see also *Hill v. Jones*, 151 Ariz. 81, 845, 725 P.2d 1115 (1986).

- GIVEN:
- REFUSED:
- Not Supported by the Evidence
- Already Covered
- Not Applicable Arizona Law
- X Other

MODIFIED:

PLAINTIFF'S REQUESTED JURY INSTRUCTION NO. 29

A "scheme or artifice to defraud" is a plan to mislead another person for the purpose of gaining some material benefit or for the purpose of inducing any person to part with property or to change position.

Authority: *State v. Suarez*, 137 Ariz. 368, 670 P.2d 1192 (App. 1983); *State v. Stewart*, 118 Ariz. 281, 576 P.2d 140 (App. 1978); *State v. Smith*, 121 Ariz. 106, 588 P.2d 848 (App. 1978).

GIVEN:

REFUSED: Not Supported by the Evidence

..... Already Covered

..... Not Applicable Arizona Law

X Other

MODIFIED: