

THE CROSSING Chapter 9

Instructions to the jury
in Duane Harms'
manslaughter trial

The statutes of the State of Colorado provide in part:

1. The driver of any motor vehicle carrying passengers for hire, or of any school bus carrying any school child, * * * before crossing at grade any track or tracks of a railroad, shall stop such vehicle within 50 feet but not less than 10 feet from the nearest rail of such railroad, and while so stopped shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train, except as hereinafter provided, and shall not proceed until he can do so safely.

2. No stop need be made at any crossing where a police officer or traffic control signal directs traffic to proceed."

It is a misdemeanor for any person to violate any of the above provisions.

The statutes further provide:

1. The State Board of Education by and with the advice of the Director of Revenue shall adopt and enforce regulations not inconsistent with this article to govern the operation of all school buses used for the transportation of school children when owned and operated by any school district or privately owned and operated under contract with any school district in this state, and such regulations shall by reference be made a part of any such contract with a school district. Every school district, its officers and employees, and every person employed or under contract by a school district shall be subject to such regulations."

3. The violation of any provisions of this section shall be a misdemeanor, and any person convicted of the violation of any provision of this section shall be punished," as provided by law.

That certain school bus regulations of the State of Colorado adopted by the Colorado State Board of Education as provided by law are as follows:

"It is unlawful for any person to drive a school bus in such a manner as to indicate either wilful or wanton disregard for the safety of persons or property. The driver of a school bus shall at all times operate the bus in a safe, prudent, and careful manner, and comply with the laws and ordinances of the jurisdiction in which the bus is being operated. He shall at all times govern the speed and the operation of the bus with due regard for the conditions then existing."

"The driver of a school bus shall make a complete stop at all railroad grade crossings. When the driver has ascertained that the track is clear in both directions after making such stop, the bus shall proceed in low gear until the tracks are crossed. The door and the left window shall be opened in order that the driver might listen and look more effectively for on-coming trains."

"The driver of a school bus shall not permit anyone to stand in the bus while it is in motion. He shall be responsible for maintaining proper seating of passengers and for seeing that his vision to the front, sides, and rear is not obstructed."

"The driver of a school bus shall not operate the bus with a broken window except to finish the route or in case of an emergency where repairs cannot be made at once. In no case shall a bus be operated with non-transparent material in the windshield, rear window, or side windows that would impair the driver's view to the front, to the sides, or by means of a mirror to the rear."

If you find from the evidence beyond a reasonable doubt that immediately prior to and at the time of the collision between the train and the bus the defendant ~~was~~ intentionally ~~was~~ through criminal neglect was violating any one of the provisions of the statute or statutes and the school bus regulations as set forth in these instructions and that the injury and death to the persons named in the information was proximately caused by such violation by the defendant in violation of the provisions of the statute or the school bus regulations set forth in these instructions, then in such case the defendant would be guilty of involuntary manslaughter in the commission of an unlawful act.

If you do not find that the defendant was committing any violation of the statutes or school bus regulations as set forth in these instructions, yet if you find from the evidence beyond a reasonable doubt that the defendant in operating and driving of the school bus at the time and place of the accident was operating and driving said school bus in a criminally negligent manner and that such negligence in operating or driving was the proximate cause of the injury and subsequent death of the persons named in the information, then in such case the defendant would be guilty of involuntary manslaughter in the commission of a lawful act in an unlawful manner which probably might produce the death of a human being.

III On the other hand, if you do not find from the evidence in this case beyond a reasonable doubt that the defendant then and there intentionally or through criminal neglect was operating and driving the school bus in violation of one or more of the statutory provisions or the school bus regulations of the State of Colorado as set forth herein or driving said bus in a criminally negligent manner, or if you do not find beyond a reasonable doubt from the evidence in this case that any such operation and driving of the school bus was the proximate cause of the death of the persons named in the information, then and in either event you will find the defendant not guilty of manslaughter.

INSTRUCTION NO. 6

To willfully and wantonly disregard the rights of others requires a consciousness of heedless and reckless conduct by which the safety of others is endangered. Willful and wanton disregard requires that the action was the result of an active and purposeful intent. Willful action means voluntary; by choice; intentional; purposeful. Wantonness signifies an even higher degree of culpability in that it is wholly disregarding of the rights, feelings and safety of others. One may be said to be guilty of willful and wanton disregard when he is conscious of his misconduct, and although having no intent to injure anyone, from his knowledge of surrounding circumstances and existing conditions is aware that his conduct in the natural sequence of events will probably result in injury to another, and is unconcerned over the possibility of such result.

Omitting to weigh consequences is simple negligence; refusing to weigh them is willful.

The burden of proof is upon the people before the defendant can be found guilty to prove each and every material allegation contained in the information, to your satisfaction beyond a reasonable doubt. If any one or more of the material allegations in the information have not been so proved by the evidence, you will find the defendant not guilty. Upon the other hand, if you find that each and every material allegation in the information has been proven by the evidence beyond a reasonable doubt, you will find the defendant guilty.

The material allegations contained in the information in this case are:

(1) That the defendant Duane Russell Adams did then and there unlawfully kill and slay Linda Alles, Gerald Baxter, Kathy Brantner, Mark Brantner, Calvin Craven, Ellen Lou Craven, Cindy Dorn, April Melody Freeman, Jimmy Vaughn Ford, Kathy Heimbeck, Pamela Heimbeck, Steve Larson, Mary Lotano, Sherill Mitchell, Marilyn Paxton, Janet Paxton, Robert Smock, Linda Weiss, Elaine Ann White, and Julian White, each a human being.

(2) That said alleged offense occurred on or about the 14th day of December, 1961.

(3) That said alleged offense occurred in the County of Weld and State of Colorado.

Circumstantial Evidence

No. 4

What is meant by circumstantial evidence in criminal cases is the proof of such facts or circumstances connected with or surrounding the commission of the crime charged, as tend to show the guilt or innocence of the party charged; and, if these facts and circumstances are sufficient to satisfy the jury of the guilt of the defendant beyond a reasonable doubt, then such evidence is sufficient to authorize the jury in returning a verdict of guilty.

INSTRUCTION NO. 17

The following is the statutory definition of crime, viz:

A crime or misdemeanor consists in a violation of a public law in the commission of which there shall be a union or joint operation of act, and intention or criminal negligence.

Intention is manifested by the circumstances connected with the perpetration of the offense, and the sound mind and discretion of the person accused.

A person shall be considered of sound mind who is neither an idiot, nor lunatic, nor affected with insanity, and who has arrived at the age of fourteen years, or before that age, if such person knows the distinction between good and evil.

No.

9A

Intent is manifested by the circumstances connected with the perpetration of an offense and the sound mind and discretion of the person accused. A person shall be considered of sound mind who is neither an idiot nor afflicted with insanity, and who has arrived at the age of fourteen years, or before that age if such person knows the distinction between good and evil.

INSTRUCTION NO. 11

You have heard the testimony of a witness who has given evidence and testified as an expert, giving opinions. This class of testimony is proper and competent concerning matters involving special knowledge or skill, or experience upon some subject which is not within the realm of the ordinary experience of mankind and which requires special research and study to understand. The law allows those skilled in that special branch to express opinions and upon a hypothetical state of facts stated to them to say whether or not, according to their experience and research, a fact may or may not exist. But nevertheless, while their opinions are allowed to be given, it is entirely within the province of the jury to say what weight shall be given to them. The jurors are not bound by the testimony of the expert; his testimony is to be canvassed as that of any other witness; just as far as his testimony appeals to your judgment, convincing you of its truth, you should adopt it, but the mere fact that the witness was called as an expert and gave opinions upon a particular point, does not necessarily obligate the jury to accept his opinion as to what the facts are in the face of the testimony of witnesses claiming to have actual knowledge of the facts.

INSTRUCTION NO. 10A

"Proximate cause" is a cause which in the natural and continued sequence and unbroken by any efficient intervening cause produced the result complained of or without which the result would not have occurred.

In this case the cause of the killing of the twenty persons named in the information may be a "proximate cause" without being the sole cause, that is, it may be deemed a proximate cause if it is the efficient cause, a dominating cause, which produced the death and without which such deaths would not have occurred, even though there may be other contributing causes.

INSTRUCTION NO. 12

You are instructed that any claim of contributory negligence on the part of any other person, persons, or agency is not a defense, is immaterial, and shall not be considered by you in arriving at your verdict.

Presumption on right and wrong

No. 125. 14

Every person mentally capable of knowing right from wrong in relation to his acts is presumed to intend to do that which he does do, and to intend the natural and probably consequences of his act. It is for the jury to determine the facts as to the defendant's intent, which may be shown either by direct or by circumstantial evidence. Intent is an act or a purpose of the mind rarely discoverable except by the acts of the person. Intention is manifested by the circumstances connected with the perpetration of an offense, and the sound mind and discretion of the accused.

Jury not consider punishment

No. 14

The Court instructs you that you have nothing whatever to do with the punishment to be administered in this cause in case of a conviction, and you will not consider it for any purpose; but it is your duty to try this case upon the law and the evidence, and upon that alone, and to render a true verdict thereon; and the punishment to be administered, if any, is solely in the discretion and duty of the Court, with which the jury have nothing to do.

These instructions contain the law that will govern you in this case, and in determining the fact you should consider only the evidence given upon trial. Evidence offered at the trial and rejected by the court and evidence stricken from the record by order of the court should not be considered by you. The opening statements and the arguments of counsel and the remarks of the court and of counsel are not evidence.

The arguments, statements and objections made by counsel to the court or to each other, and the rulings and orders made by the court, and the remarks made by the court during the trial and not directed to you, should not be considered by you in arriving at your verdict. The court did not by any words uttered during the trial, and the court does not by these instructions, give or intimate, or wish to be understood by you as giving or intimating, any opinion as to what has or has not been proven in this case, nor as to what are or are not the facts in the case.

No single one of these instructions states all the law applicable to the case, but all of these instructions must be taken, read and considered together, as they are connected with and related to each other as a whole.

No. 16

The Court submits to you two forms of blank verdicts.
 When you retire to your jury room you will select one of your
 number as foreman, and when you shall have agreed upon your ver-
 dict or verdicts, your foreman will sign the verdict or verdicts
 so agreed upon and you will return the same into Court.

Given by the Court:

Donald P. [Signature] Judge.

STATE OF COLORADO,

County of Weld.

IN THE MATTER OF

THE PEOPLE OF THE STATE OF COLORADO,

Plaintiff,

vs.

DUANE RUSSELL HARMS

Defendant

IN THE DISTRICT COURT

No. 5815

FILED IN
DISTRICT COURT

WELD CO.

MAR 24 1962

ROBERT W. RHODES

CLERK

CRIMINAL ORDER BOOK 17

DOCUMENT NO. 474

VERDICT.

We, the Jury, being first duly sworn and empaneled in the above entitled case do, upon our oaths, find the Defendant, NOT, guilty as charged in the information herein.

Walter M. Middaugh

Foreman.

MIDDAUGH

Criminal Order Book 27

Document No. 473

IN THE DISTRICT COURT IN AND FOR THE
COUNTY OF WELD AND
STATE OF COLORADO

Criminal Action No. 5815

BE IT REMEMBERED, That heretofore and on to-wit, the 24th day of March
A. D. 19. 62., the same being one of the regular juridical days of the March A. D. 19 62
Term of Court, the following proceedings, inter alia, were had and entered of record in said Court to-wit:

THE PEOPLE OF THE
STATE OF COLORADO

vs.

DUANE RUSSELL HARMS

Defendant

ORDER OF COURT

VERDICT OF THE JURY

DONALD A. CARPENTER

Judge

R. FORNEST BRENNER

Reporter

At this 24th day of March, 1962, at the hour of 7:00 o'clock A. M. come again the
said parties by their counsel respectively, the defendant DUANE RUSSELL HARMS being pre-
sent in Court in person. And come again the said jurors with their Verdict. Thereupon
the Verdict is read finding the defendant Not Guilty as charged in the Information.
Whereupon the Verdict is received and ORDERED entered. IT IS FURTHER ORDERED that the
Information be dismissed and the said defendant be discharged and go hence hereof without
day, and his bondsmen released.

VOUCHER
WELD COUNTY, COLORADO

...ed and attached to voucher with original order.
...pon by the Board of County Commissioners before warrants can be drawn.
...igned by the person in whose favor they are made. Signatures must be acknowledged by Notary Public or other person

...ity.
...must have the Post Office address with Street or P. O. Box Number.
...ers must be filled in with typewriter or ink and signed in ink.

Gully, Colorado, *March 20*, 19*62*

TO *Marshall Cafeteria*
(Name of person or company to whom bill is due)

FOR OFFICE USE ONLY
ITEMS REC. DEPT. HD.
Exp. CO. No. SM. SIG.

<i>Mar 20 - 14</i>	<i>Supper</i>	<i>21.16</i>
<i>Mar 21 - 14</i>	<i>dinner</i>	<i>23.71</i>
<i>21</i>	<i>12</i>	<i>2.3</i>
<i>Mar 22 - 14</i>	<i>dinner</i>	<i>17.52</i>
<i>Mar 23 - 14</i>	<i>dinner</i>	<i>24.93</i>
<i>Mar 23 - 14</i>	<i>supper</i>	<i>19.71</i>
		<i>\$ 104.67</i>

STATE OF **COLORADO**
County of **WELD**

SEAL Subscribed and sworn to before me this
30th day of **MARCH**, 19 **62**

Geo. W. Fisk
Deputy County Clerk
Notary Public

I, the undersigned, being duly sworn, doth depose and say that the above account is true and just, that the services or supplies thereon charged for have been actually furnished, rendered to and for said County, and that the same have not been paid nor any part thereof.

Sign Here: *Marshall Cafeteria*
By *Mrs. C. R. Bond*
Mail Address: *937-9th*

MAIL VOUCHERS IN LONG ENVELOPES

IN THE DISTRICT COURT IN AND FOR THE
COUNTY OF WELD AND STATE OF COLORADO

Re: Bond of Duane Russell Harms
People vs. Harms - Criminal Action # 5615

Received from the Clerk of the District Court, Certified Check
in the amount of \$1,000.00, Bond for Duane Russell Harms.


John L. Roberts - March 20, 1969