

# THE CROSSING Chapter 9

Instructions to the jury in Duane Harms' manslaughter trial INSTRUCTION NO. 11

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 misdomeanor 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 ", made a part of any such contract with a school district. Every school district, its officers and employees, and evury 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 an, erson 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 scating 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 mirro; to the rear." INSTRUCTION NO.

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 intentionally of 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 of the provisions of the statute or the schoo' gulatie

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 of 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 mansiaughter in the commission of a lawful act in an unlawful manner which probably might produce the death of a human being.

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 regligent 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.

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 disregardful 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. Burden ni Provi

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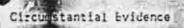
The burden of proof is upon the people before the defendant can be found quilty to prove each and every miterial allegation contained in the information, to your satisfaction beyond a reasonable doubt. If any one or more of the material allegations in the information have not been so proved by the evidence, you willfind 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 Haums did then and there unlawfully kill and slay Linda Alles, Gerald Baxter, Kathy Brantner, Mark Brantner, Calvin Graven, Ellen Lou Graven, Cindy Darm, April Melody Freeman, Jimmy Vaughn Ford, Kathy Heimbuck, Pamela Heimbuck, Steve Larson, Mary Lorano, Sherill Mitchell, Marilyn Paxton, Janet Paxton, Pobert Smock, Linda Malac. Elaine Ann White, and Juleen White, each a human being.

(2) that said alleged offense occurred on or about the lich day of December, 1961.

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



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.

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INSTRUCTION NO. 1/

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 offensity 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 ege of fourteen years, or before that ege, if such person knows the distinction between good and evil. Latent is manifested by the circumstances connected with the perpetration of an offense and the sound mind and discreof 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.

No. 9A

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INSTRUCTION NO. 1/

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 test way 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.

You are instructed that any claim of contributory negligence on the part of any other persons persons, or agency 12 not a defense, is immaterial, and shall not be considered by you in arriving at your verduct. Presumption on right and wrong

No. -45. 13

Every person mentally copable 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 "foot as to the defendant's intent, which may be shown either by direct or by tial evidence. Intent is an act of a purpose of the mind rarely discoverabcept 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. ducy not ecusider punistment

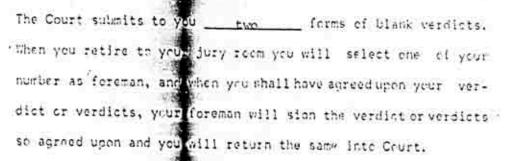
The Court instructs you that you have nothing whatever to do with the punishment to be administered in this cause in case of a conviction, and you will not consider it for any purpose; but it is your duty to try this case upon the law and the evidence, and upon that alone, and to render a true verdict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

INSTRUCTION NO.

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 as 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 coursel 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.

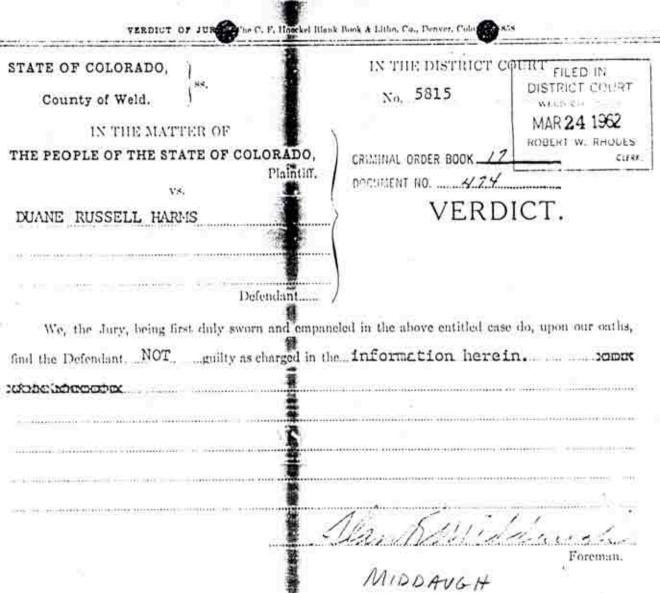


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Uctions on Verdicts

Civen by the Court:

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Document No. 475

### 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

THE PEOPLE OF THE	ORDER OF COURT
STATE OF COLORADO	VERDICT OF THE JURY
vs.	
DUANE RUSSELL HARMS	DONALD A. CARPENTER Judge
Defendant	R. FORCEST BRENDER

At this 2hth day of March, 1962, at the hour of 7:00 o'clock A. M. some again the said parties by their counsel respectively, the defendant DUANE RUSSELL HARMS being present 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.

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STATE OF COLORADO

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Sign Here: By ....

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MAIL VOUCHERS IN LONG ENVELOPES

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

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Re: Bond of Duane Ruscell Harms People VS. Harms Criminal Action # 5515 Received from the Clerk of the District Court, Certified Check

in the amount of \$1,000,00, Bond for Duane Russell Harms.

Roberts John - March